Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-5908

LEON CHAMBERS,

Petitioner,

—v.—

MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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CIRCUIT COURT, AMITE COUNTY

46 379

LEON CHAMBERS

vs.

STATE OF MISSISSIPPI

* * * *

3 vols. record & p.o.—1/26/71.

Motion for time—Mullins & Smith—3/1/71.

Appellant's brief due March 22, 1971 (Gillespie) 3/2/71

(6) Statement of Case—Mullins & Smith
George F. West, Jr. 3/19/71

(6) Assignment of Errors— " " " " 3/19/71
Brief of Appellant— " " " " 3/19/71

(6) Abstract of Record— " " " " 3/19/71
(Oral Argument Requested)

Motion for time—Timmie Hancock 4/14/71

Appellee's brief due April 23, 1971 (Gillespie) 4/15/71

(6) Brief of Appellee—Timmie Hancock 4/30/71

(6) Rebuttal brief of appellant—Mullins & Smith
George F. West, Jr. 5/10/71

Arg. & Sub 5/19/71—BP 358.

Pick-up notice mailed 6/25/71.

Sheriff reported appellant in custody—6/28/71
Opinion 6/28/71

Affirmed 6/28/71—BP 391.

(6) Petition for rehearing—Mullins & Smith 7/9/71

Petition for rehearing denied 9/14/71—BP 406

Mandate issued 9/15/71—Copy to sheriff & penitentiary

Notice from clerk that Chambers in penitentiary 9/21/71.

(2) Motion for certification of record—John C. Brittain, Jr. 12/10/71

(3) Application for bail pending consideration of petition for writ of certiorari in the U. S. Supreme Court—Constance Ione Slaughter 1/5/72.

(6) Response to application—Timmie Hancock 1/10/72

Application and response submitted 1/11/72

Original record mailed to Peter Weston 1/5/72

Application for bail denied 1/31/72—BP 497.

Order from U. S. Supreme Court allowing bail 2/3/72.

Appearance Bond 3/13/72

STATE OF MISSISSIPPI
HINDS COUNTY

I, Julia H. Kendrick, Clerk of the Supreme Court of the State of Mississippi do hereby certify that the above and foregoing is a true copy of the entries shown on the General Docket in Cause No. 46,379-styled-Leon Chambers vs. State of Mississippi.

Given under my hand and seal of office this the 24th day of March, A.D. 1972.

/s/ Julia H. Kendrick
Clerk Supreme Court

CIRCUIT COURT

OCTOBER TERM 1969

THE STATE OF MISSISSIPPI)
COUNTY OF WILKINSON)

The Grand Jurors for and of the STATE OF MISSISSIPPI taken from the body of the good and lawful men of Wilkinson County, elected, empaneled, sworn and charged to enquire in and for Winkinson County, at the Term aforesaid, of the Court aforesaid, in the name and by the authority of the STATE OF MISSISSIPPI, upon their oath, present that Leon Chambers and James Williams late of the County aforesaid, on the 14th day of June A. D. 1969, at the County aforesaid did wilfully, unlawfully, feloniously and of their malice aforethought kill and murder one Aaron Liberty, a human being Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Mississippi.

/s/ L. L. Forman
District Attorney

No. 3732

WILKINSON CIRCUIT COURT

OCTOBER TERM 1969

THE STATE OF MISSISSIPPI

vs.

LEON CHAMBERS and JAMES WILLIAMS

INDICTMENT

No Prosecutor
(Murder)

State Witnesses:

James Forman
Waldo Welsh
Gordon Geter
H. B. McGraw

A TRUE BILL

/s/ W. B. Nettereielle
Foreman Grand Jury

Filed in Open Court in the presence of the Grand Jury this 7th day of October 1969.

/s/ Samuel E. Smith
Clerk

By _____
Deputy Clerk

IN THE CIRCUIT COURT
OF WILKINSON COUNTY, MISSISSIPPI

MARCH TERM, 1970

No. 3732

STATE OF MISSISSIPPI

vs.

LEON CHAMBERS and JAMES WILLIAMS

ARRAIGNMENT—Filed March 16, 1970

This day into open Court came the District Attorney, who prosecutes for the State of Mississippi, and came also Leon Chambers and James Williams, in their own proper person, and represented by counsel, Honorable George West, of Natchez, Mississippi, and were arraigned upon an indictment lawfully returned by the Grand Jury of Wilkinson County, Said State, charging the Defendants with the crime of "MURDER". And being duly advised of all their legal and constitutional rights in the premises and being further advised of the consequences of such a plea, the Defendants did each then and there enter a plea of "NOT GUILTY" to said indictment. Whereupon the defendants were remanded to the custody of the Sheriff of Wilkinson County, Mississippi with the right of bond in the amount of Fifteen Thousand Dollars ($15,000.00) each.

I, Samuel E. Smith, Circuit Clerk, Wilkinson County, Mississippi, hereby certify that this is a true and correct copy as appears on Page 20, Minute Book 26.

Witness my signature and official seal, this the 5th day of May, 1970.

/s/ SAMUEL E. SMITH
SAMUEL E. SMITH
Circuit Clerk
Wilkinson County, Mississippi

FILED:
3-16-1970
Samuel E. Smith
Circuit Clerk

IN THE CIRCUIT COURT
OF WILKINSON COUNTY, MISSISSIPPI

MARCH TERM, 1970

No. 3732

STATE OF MISSISSIPPI

vs.

LEON CHAMBERS and JAMES WILLIAMS, DEFENDANTS

MOTION FOR CHANGE OF VENUE

TO THE HONORABLE CIRCUIT COURT OF WILKINSON COUNTY, MISSISSIPPI:

Comes now the Defendants, Leon Chambers and James Williams, in the above styled and numbered cause and by their Attorneys, George F. West, Jr. and Mullins and Smith, supported by the affidavits of two credible persons, and moves the Court to allow a change of venue for the following causes, to-wit:

(1)

That the Defendants cannot secure a fair and impartial trial by jury in Wilkinson County because of the prejudgment of the case of grudge, or ill will, there existing against them.

(2)

That there has been employed by parties unknown a special prosecutor in this cause, to-wit: Honorable Clay B. Tucker of Woodville, Mississippi, who is a former District Attorney and has practiced law in Wilkinson County, Mississippi for many years, and whose influence in this matter is boundless in Wilkinson County and will work to the prejudice, prejudgment, and ill will of these defendants, thus preventing and making impossible a fair and impartial trial in said county.

(3)

That there has been prejudicial newspaper articles appearing in the Natchez Democrat and The Woodville Republican extolling the virtues of the deceased, and condemning the defendants, and making it impossible for the defendants to have a fair and impartial trial in Wilkinson County, Mississippi.

(4)

That the Police Department of the City of Woodville, Mississippi, and the Office of the Sheriff of Wilkinson County, Mississippi, are both very anxious to see the defendants convicted, and have exerted and will continue to exert any and all influence possible to secure the convictions of the defendants, therefore making it further impossible for the defendants to have a fair and impartial trial in Wilkinson County, Mississippi.

(5)

That it is impossible for the Defendants to secure a fair and impartial trial by a jury in Wilkinson County, Mississippi.

(6)

This motion is submitted to the Court so that the Defendants may have a fair and impartial trial, and not to hamper justice or cause delay.

/s/ JAMES WILLIAMS
Defendant

/s/ LEON CHAMBERS
Defendant

Attorneys for Defendants

/s/ GEORGE F. WEST, JR.
GEORGE F. WEST, JR.
MULLINS & SMITH

By: /s/ CLYDE W. MULLINS

Before me, Samuel E. Smith, Circuit Clerk in and for the County of Wilkinson, State of Mississippi, appeared the Defendants in the above cause who being duly sworn says on oath that the above facts are true.

/s/ JAMES WILLIAMS
Defendant

/s/ LEON CHAMBERS
Defendant

SWORN TO AND SUBSCRIBED before me this the 9th day of March, A.D., 1970.

/s/ SAMUEL E. SMITH
Circuit Clerk

Before me, Samuel E. Smith, Circuit Clerk in and for the County of Wilkinson, State of Mississippi, appeared James Jolliff, Jr. and Mon C. Allen, credible persons both, who being by me first duly sworn make this their supporting affidavits that the above facts are true.

/s/ JAMES JOLLIFF JUNIOR

/s/ MON C. ALLEN

SWORN TO AND SUBSCRIBED before me this the 9th day of March, A.D., 1970.

/s/ SAMUEL E. SMITH
Circuit Clerk

FILED:
March 9, 1970
Samuel E. Smith, Circuit Clerk
Wilkinson County, Miss.

By /s/ Samuel E. Smith

IN THE CIRCUIT COURT
OF WILKINSON COUNTY, MISSISSIPPI

MARCH TERM, 1970

No. 3732

STATE OF MISSISSIPPI

vs.

LEON CHAMBERS and JAMES WILLIAMS, DEFENDANTS

ORDER

This day this cause came on for hearing on Motion for Change of Venue and the Court having considered said motion, affidavits in support thereof and argument of counsel, and being of the opinion that the same is well taken:

IT IS THEREFORE ORDERED that said Motion for Change of Venue be, and the same is hereby sustained, and that this cause be and the same hereby is ordered, removed to the next regular criminal term of the Circuit Court of Amite County, Mississippi, and the Defendants remanded to the custody of the Sheriff of Wilkinson County, Mississippi, with the right of bond in the amount of Fifteen Thousand ($15,000.00) Dollars each.

So ordered this the 16th day of March, 1970.

/s/ JAMES A. TORREY
Circuit Judge

FILED:
March 16, 1970
Samuel E. Smith, Circuit Clerk
Wilkinson County, Miss.

By: /s/ Samuel E. Smith

IN THE CIRCUIT COURT
OF AMITE COUNTY, MISSISSIPPI

No. 1647

STATE OF MISSISSIPPI, PLAINTIFF

vs.

LEON CHAMBERS and JAMES WILLIAMS, DEFENDANTS

MOTION FOR SUBPOENA DUCES TECUM

Comes now the Defendants, Leon Chambers and James Williams, by their attorneys, Mullins & Smith, and George F. West, Jr., and moves the Court for the issuance of a subpoena duces tecum commanding Gable McDonald, Route 1, Box 800 B, Woodville, Mississippi, to appear and give testimony upon the trial of this case at the Amite County Courthouse, Liberty, Mississippi, on October 26th at 9 a.m. o'clock, 1970, as an adverse witness, and produce on the trial all .22 caliber pistols purchased and owned by him between June 1, 1968, and June 14, 1969, and one .38 caliber Colt special which he took from the automobile of James Williams on the night of June 14, 1969, during the time that Leon Chambers was being transported from Woodville, Mississippi, to the hospital at Centreville, Mississippi, and the return trip to Woodville, Mississippi, and which he had in his possession on the following Sunday, June 15, 1969, and for reasons for this motion the said Gable McDonald came to the law offices of Mullins & Smith, 133 South Commerce Street, Natchez, Mississippi, on November 10, 1969, and by sworn statement admitted that he shot Aaron Liberty, deceased, on June 14, 1969, with a .22 caliber revolver, a copy of which said sworn statement is attached hereto as Exhibit "A" and made a part hereof as though copied herein in words and figures in full. The original of the said attached statement was furnished to Honorable L. L. Forman, District Attorney, and on the same day that the said statement was made by the said Gable McDonald he was surrendered to the Honorable H. B. McGraw, Sher-

iff of Wilkinson County, Mississippi. Thereafter, on December 9, 1969, a preliminary hearing was had at the Wilkinson County Courthouse in Woodville, Mississippi, before Honorable Jesse Moore, at which preliminary hearing the said Gable McDonald admitted making the statement on November 10, 1969, but testified that he made the same because of various promises made to him by persons other than the defendants herein, all of which is more fully shown by a copy of his testimony at said preliminary hearing which is attached hereto as Exhibit "B" and made a part hereof as though copied herein in words and figures in full, and by reference all of the testimony taken and transcribed by Mrs. Anabel Y. Maxie, Official Court Reporter, Sixth Circuit Court District, is made a part hereof for all purposes. Said testimony consists of a transcript containing 116 pages and reports all of the testimony taken at a preliminary hearing held before Honorable Jesse Moore, Justice of the Peace of District One of Wilkinson County, Mississippi, on Tuesday, December 9, 1969, and is duly certified by the said Mrs. Anabel Y. Maxie as being a true and correct transcript of said testimony.

Gable McDonald was not bound over to the next Grand Jury of the Circuit Court of Wilkinson County, and so far as these Defendants know and believe no further investigation into the shooting of Aaron Liberty by Gable McDonald has been made; therefore, the defendants are entitled to call the said Gable McDonald as an adverse witness if he is not called as a witness by the State.

For grounds of this Motion, Defendants would show that the firearms requested are necessary in making proof of Defendants' claim and that such testimony and production of such firearms will permit the making of the best proof on issues raised in this case. The substance of what is expected to be proven by the production of the above firearms is that Gable McDonald possessed one or more .22 caliber pistols before and on June 14, 1969, that fit the description in his statement attached, and that the only pistol possessed by Leon Chambers on June 14, 1969, was a .38 caliber revolver. That the firearms

requested bear upon this issue in order that justice may be done.

The Defendants have been unable to obtain the firearms herein set forth; and that said firearms are in the exclusive control and possession of Gable McDonald, and are beyond the reach and control of the Defendants.

Respectfully submitted,

GEORGE F. WEST, JR. and
MULLINS & SMITH

By: /s/ CLYDE W. MULLINS

SWORN TO AND SUBSCRIBED before me this the 20th day of October, 1970.

/s/ H. K. WHITTINGTON
Notary Public

My Commission Expires:
January 1st, 1972
FILED:
October 20, 1970

By /s/ H. K. Whittington
Circuit Clerk

CERTIFICATE

I, Clyde W. Mullins, one of the attorneys of record for the Defendants, Leon Chambers and James Williams, hereby certify that I have this date furnished to Honorable L. L. Forman, District Attorney, a copy of the within and foregoing Motion for Subpoena Duces Tecum.

This 20th day of October, A.D., 1970.

/s/ CLYDE W. MULLINS

EXHIBIT "A"

By: Mr. James Stokes
105 Florida Drive
Natchez, Mississipp

I would like to say that I have instructed this gentleman to tell you what he wanted to tell you, the truth, the whole truth, and nothing but the truth in its entirety.

By Mr. Clyde W. Mullins

Q. And who is this gentleman?
A. Gable McDonald
Q. What is your address?

By Gable McDonald

A. Six miles this side of Woodville on Highway 61. Route 1, Box 800-B, Woodville, Mississippi.
Q How long have you lived there?
A. Two years.
Q. Where did you live before you moved there?
A. A place called Rose Hill.
Q. Is that in Wilkinson County?
A. Yes.
Q. What is your occupation?
A. I do different things. Work at a saw-mill.
Q. Are you now employed?
A. Yes, Franklin, Louisiana, Sugar Mill.
Q. What is the name of the Sugar Mill?
A. Southcoast Corporation.
Q. You heard Mr. Stokes that he had told you to tell the truth, and nothing but the truth. You realize that you are not under arrest, that you are not detained in any way by us or anyone else.
A. Yes, sir.
Q. Did you come voluntarily?
A. Yes.
Q. Nobody compelled you to come?
A. No.
Q. Tell us briefly in your own words why you came to see us today.

A. Well, Rev. Stokes wanted me to come in to answer some questions.

Q. But he didn't compel you?

A. No, he didn't compel me.

Q. Have you been interviewed by or talked to any law enforcement officers?

A. No.

Q. I want to make it clear to you that you are not compelled to tell us anything; do you understand that?

A. Yes sir.

Q. Now where were you on June 14, 1969?

A. I was in Woodville.

Q. What time of day, if you recall, did you get to Woodville?

A. I can't tell you the exact time.

Q. Was it morning or afternoon?

A. It was afternoon because I worked until noon.

Q. Where were you working then?

A. Crosby Lumber

Q. Did you go to town by yourself or with anyone?

A. By myself.

Q. Did you go in your own automobile?

A. No, I walked part of the way and a white man picked me up.

Q. In other words, you hitch hiked?

A. Yes sir.

Q. What day of the week was this?

A. Saturday.

Q. That day there had been some disturbance close to Jack's Coffee Shop in Hayes Cafe. Were you at or near by any of these places?

A. I was right across the street from Hayes Cafe.

Q. What did you see?

A. Well I don't know exactly how it started. When I come up the law was running around different cafes.

Q. Did you know what law it was?

A. It was Liberty—Sonny Liberty I think. I don't know the white man's name.

Q. What was he doing when you first saw him?

A. He was going in every cafe. The boy

Q. And who do you mean by the boy?

A. C. C. came in the cafe.

Q. What did they do?

A. They picked the boy up. He didn't want to be arrested. They were handling him pretty rough. I walked across the street. They called for two more policemen. Geter and the other deputy.

Q. Had you known Mr. Geter before that day?

A. Yes, for several years.

Q. Does he live out near where you did?

A. He used to did but he has moved to town.

Q. What happened then?

A. They were handling the boy so rough we went to assist. The other two policemen came . This Liberty boy broke out of the crowd and went to his car and came back with a sawed off shot gun.

Q. What did he do then?

A. The shot gun fired twice.

Q. Was that before he was shot or after?

A. He fired once before he was shot.

Q. Which way did he fire before he was shot?

A. He fired to the side. He came back to the crowd.

Q. Which way was he coming? Was he coming back toward Main Street?

A. Yes.

Q. Was anyone else in the immediate vicinity that you recognized?

A. It was so thick.

Q. Who shot Officer Liberty?

A. I did.

Q. What type of gun did you use?

A. A 22 caliber.

Q. Who did it belong to?

A. Me.

Q. Did you carry it to town?

A. Yes.

Q. Where is the gun now?

A. I couldn't tell you.

Q. Did you carry it away from there or did you leave it there?

A. I carried it away from there and I gave it to one of the spokesmen.

Q. Would there be any way that we could find the gun?

A. I ask what happened to the gun later and he said he didn't know what happened to it.

Q. How many times did you fire the gun?

A. I think about 5 or 6.

Q. How many cartridges it hold?

A. 9.

Q. Was it a revolver?

A. Yes.

Q. Do you remember what kind of revolver?

A. What do you mean?

Q. Such as a Smith and Wesson, the name.

A. A 22 caliber—that is all I remember.

Q. How long had you had the gun?

A. I couldn't tell but a pretty good while.

Q. A year or more?

A. Something like that.

Q. Did anyone that you know of see you fire the gun that day?

A. No.

Q. Where were you when you fired the gun?

A. I was on the sidewalk by a tree.

Q. Were you in the alley by Jack's Coffee Shop.

A. The first shot was fired above my head and knocked down some limbs on my head. It was after this shot when I fired my pistol.

Q. Where was Officer Liberty?

A. Right in front of me.

Q. Where did the shot strike his body?

A. I imagine it did, he flinched.

Q. Did you see Leon Chambers?

A. After everything was over.

Q. Where was he?

A. I made the block and when I came back they were putting him in James Williams car. I got in the car with them and carried him to Centreville Hospital.

Q. Did you see Mr. Geter at that time?

A. He was there but I think he went on through the crowd.

Q. On back toward the other side of the street?

A. On above Main Street.

Q. I believe that you told me you hadn't talked to any law enforcement officers?

A. No, I haven't.

Q. When did you decide to tell someone about this matter?

A. Well, one I know knowed it all time.

Q. Who was that?

A. James Williams.

Q. Did you make the decision that you wanted to tell about this situation and get it off of your mind?

A. Well, I was sent for off of my job and answered some questions.

By Mr. George F. West, Jr.

Q. Did you see Mr. Geter before Mr. Liberty was shot?

A. I saw him before he was gone on through—When he was getting shot I didn't see Mr. Geter. I could not see him.

By Mr. Mullins

Q. Are you willing to testify in Court if you are called upon to do so?

A. No, not unless I had to.

Q. But if you were called upon to do so would you tell the truth?

A. I don't know, it is pretty rough in some things. Do you have any questions Mr. Stokes?

A. The only thing that I would like to indicate that the reason I had ask him to tell the truth, the only truth and nothing but the truth is because I wanted him to feel that he is willing to tell the truth here or would anywhere.

By Gable McDonald

A. I would.

Those present for this statement were Mr. James Stokes, Mr. George F. West, Jr., Mr. Cecil Gill Smith, Jr. and Mr. Clyde W. Mullins.

His

GABLE X MCDONALD

GABLE MCDONALD
Mark

Witnesses to mark
of Gable McDonald

/s/ CLYDE W. MULLINS
/s/ GEORGE F. WEST, JR.
/s/ CECIL GILL SMITH, JR.

Sworn to and subscribed before me this the 10th day of November, 1969.

/s/ BETTY C. POWERS
NEE BETTY COTTEN
Notary Public

My Commission Expires:
April 1, 1972

EXHIBIT "B"

BY MR. FORMAN:

Your Honor, at this time we'll rest.

AND THEREUPON, GABLE McDONALD, having been called as a witness, and having first been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. BRAMLETTE:

Q. Now, Gable, I want you to speak very distinctly and loudly so that she can take down what your saying, and remember that you have to answer her yes or no or whatever your answer may be and not by nod or by other indication because she can't see you, or rather she is looking down at her pad and she has to hear you so she can put it down in the record, and talk loudly and plainly.

A. Yes, sir.

Q. What is your name?

A. Gable McDonald.

Q. And how old are you, Gable?

A. I am thirty-three.

Q. Where do you live now?

A. I live out on the poor house road, the old sixty-one Highway.

Q. Where is that in regard to Woodville, in relation to Woodville where is it?

A. Going towards Natchez its four miles out—six miles out of Woodville.

Q. And how long have you lived in that area?

A. Two years.

Q. Where did you live before that?

A. I lived down at Rose Hill down there.

Q. Rose Hill, where is Rose Hill?

A. Well, you turn off there at Deloroso and come back down in there.

Q. Whose place did you live on down there?

A. I was renting from Mr. Red Jensen.

Q. Gable, I'll ask you if you were employed before you were put in jail, arrested, were you working?

A. Yes, sir.

Q. Where?

A. Franklin, Louisiana.

Q. Doing what type work?

A. Working at a sugar mill, grinding sugar.

Q. While you were down there did you receive word from your wife that she wanted to see you?

A. Yes, sir.

Q. How did you receive that word?

A. She told me she had some business, she wanted to see me on some business.

Q. How did she tell you that?

A. It had on the letter from her she wanted to see me on some particular business.

Q. She wrote you a letter asking you to come home?

A. Yes, sir.

Q. And did you come home?

A. Yes, sir, I come home. I had that letter on Thursday, I think on Thursday.

Q. And when did you come home?

A. I left that Friday night. I made it home that Saturday morning about five or five-fifteen.

Q. Do you have any idea what the date was? The date of the month?

A. No, sir, I don't know the date of the month.

Q. Do you know what month it was in?

A. No, sir, I don't.

Q. If I told you it was in November would you deny that, would that be correct?

A. It was after October.

Q. It was after October?

A. Yes, sir.

Q. All right, what did you find out when you came home?

A. Well, my wife told me that—

Q. Talk up a little louder, now, don't be afraid.

A. My wife told me that Sammy Hardin said Stokes wanted to see me.

Q. Who is Sammy Hardin?
A. Chester Hardin's son.
Q. Where did he tell you this, Gable?
A. Where did Sammy tell me this?
Q. Yes.
A. He said Stokes told him to tell my wife to write for me.
Q. All right, now, where were you and Sammy when Sammy told you this?
A. Sammy told my wife to write for me.
Q. And you came home?
A. I came home.
Q. And when you arrived home, did you see Sammy Hardin again?
A. I seed Sammy. Sammy come up there, he was buying him a acre of land from Lonnie Bruce, and he come up there and I asked him what did Stokes want. He said he didn't know because Stokes didn't tell him.
Q. All right, now, then what happened?
A. Well, I went to Natchez, I caught Sammy to Natchez. He was going up there to take one of his girls to the doctor.
Q. On what day of the week was this?
A. That was on Saturday.
Q. On Saturday, go ahead.
A. And I caught him as far as the doctor's office, which is up there at Jeff-Davis Hospital and I got out the car with him and I walked on up there on the By-Pass up there by that filling station and a cab came alone and I flagged the cab and caught the cab on up town and I walked over there to Stokes' office.
Q. What time of day was it approximately that you arrived at Stokes' filling station?
A. I don't know the exact time, but it was somewhere close around twelve o'clock.
Q. On Saturday?
A. On Saturday.
Q. And what did you find upon arriving there?
A. Well, when I got there, Mr. Stokes was washing a car. When I got there he quit. He went around in a

little old room around on the side of the station. He asked me about owning the killing of Liberty.

Q. Now, repeat that so that these people can understand you so that it can be recorded. He asked you about what?

A. Owning the killing of Liberty.

Q. I believe he is saying, Miss Anabel, about owning the killing of Aaron Liberty, is that right?

A. Yes, sir.

Q. Would you explain that a little bit?

A. Go back over it?

Q. Just tell me, what did you think he was talking about at this time? Did you know?

A. He asked me about owning the killing of Sonny Liberty. I told him I couldn't do that. I said if I do they'll send me to the pen owning something like that. He said, no, the law ain't going to know nothing about it. He just wanted the statement. Wasn't no law or nothing, I wouldn't have to go to jail or nothing.

Q. He said who wanted the statement?

A. He just did want the statement.

Q. Talking about himself, Stokes?

A. Yes, sir.

Q. A statement saying what?

A. That I killed Sonny Liberty.

Q. What did you reply to him?

A. I told him that I couldn't own that because if I owned it they would send me to the pen about owning something like that. He told me, no, he said, ain't no law or nothing going to know nothing about that. He just wanted the statement.

Q. All right, then did you give a statement.

A. He went over the statement with me.

Q. All right, how did he go over it with you?

A. I don't know what he had on the table, it was one of these long tablets and he was telling me what to say.

Q. Was he coaching you about what you should say when the statement was asked?

A. He was telling me what to say.

Q. All right, what did he tell you to say?

A. He told me—I can't remember all of it now, but he was telling me if they asked where I was that Saturday that I was sitting across the street.

Q. What Saturday now?

A. The Saturday that Liberty got killed.

Q. He told you to say that on the Saturday Liberty was killed you were sitting across the street?

A. Yes, sir.

Q. All right, before going into that statement a minute, did he persuade you to admit the killing of Aaron Liberty?

A. He asked me to do it.

Q. All right, did he make you any promises?

A. Promises like what?

Q. Promises like money or anything?

A. Yes, sir.

Q. All right, what did he promise you?

A. (Answer not audible)

Q. Would you repeat that? Now, look, talk out just a little louder and a little more distinctly so everyone here can hear you.

A. He said he would sue the Town for so many thousand dollars and he said that would be divided between the three of us. I disremember now how many thousand dollars it was.

Q. You don't remember how many thousand it was?

A. So many thousand dollars and he said that would be divided between the three of us.

Q. What three?

A. That was me, James Williams and Leon Chambers.

Q. After he promised you that, what else did he tell you about going to jail or going to the penitentiary?

A. He said I wouldn't even go to jail or nothing. He said I wouldn't have to go to jail, wouldn't no law or nothing know nothing about it. They just wanted the statement. I would be going back to work that Monday evening.

Q. Did you in fact give them a statement? Did you give them a statement?

A. Yes, sir, I went down to the office and give them a statement and when I made the statement they brought

me back to Mr. Stokes' filling station. I stayed around there and Stokes left and he come back and got me. I went back down there and signed the statement and that's the time they told me I had to go to jail.

Q. All right, now, let's go back just a little bit. You arrived in Natchez on Saturday about noon?

A. On, Saturday, yes, sir.

Q. Now, was that the day you made the statement?

A. No, sir. I made the statement on Monday.

Q. Why didn't you make it that day, if you know?

A. Well, he called West, and West said he couldn't get around to it that Saturday. He had to have a secretary and he told me to come back Monday.

Q. Did you go back on Sunday?

A. No, sir.

Q. As I understand your testimony, then, you only went to Natchez two times?

A. Saturday and Monday.

Q. Did you ever go to Mr. West's office?

A. No, sir. I don't know if he's got an office or not.

Q. Well, where did you see him?

A. That Saturday I seed him at Stokes' station. That Monday I met him coming to Stokes' station, back of Stokes' station. Me and Stokes was in the car going down the street and I met him going up the street to the station.

Q. All right, now, when you left on Saturday did you tell Stokes you would make the Statement, when you left Natchez on Saturday?

A. I told him I would make the statement.

Q. And he told you to come back on Monday, if I understand your testimony?

A. To come back on Monday.

Q. And what time did you come back on Monday?

A. I don't know exactly the time. I made it there, it was before dinner.

Q. Who did you ride to Natchez with on that Monday?

A. I went to Natchez with my brother-in-law, Oscar Tillery.

Q. When you arrived in Natchez on that Monday, where did you go?

A. Oscar had a wreck out there on that road on Saturday or that Sunday one, I disremember, but he was taking his car up to the Oldsmobile place in Natchez to have it checked and I went on up to the Oldsmobile place with him and he left the Oldsmobile place and come on up town and I got out the car with him and walked to the Station.

Q. What did you find when you arrived at the station?

A. Stokes, he was over there and I think two boys working there was there.

Q. All right, then what happened?

A. Well, Stokes—me and him went back in that little room on the side of the station and he went over it with me. He called West.

Q. On the telephone?

A. On the telephone.

Q. Now, you say he went over it with you?

A. Yes, sir.

Q. How many times did he go over it with you, on Saturday, first of all?

A. On Saturday?

Q. Yes.

A. Just once. Us talked about it, I don't know how many hours it was, but it was somewhere between three or three and a half hours, something like that.

Q. You rehearsed this statement that you were going to make for this lawyer?

A. Yes, sir.

Q. And when you came back on Monday did you go over the statement with him again?

A. Yes, sir.

Q. In what form was this statement, do you know? Was it written on a piece of paper or on a tablet?

A. It was written in a long tablet.

Q. Like this tablet right here, like this yellow tablet?

A. Yes, sir.

Q. Was it in hand writing or was it typewritten?

A. It was in hand writing.

Q. All right, then on Monday when you—after you had gone over the statement with Stokes again what happened after he called Mr. West?

A. Me and him got in the car and started down back of the station and met West walking up to the station and stopped and picked him up and went on around to his office.

Q. Do you know where you went?

A. Only to the office.

Q. Well, who was present in the office?

A. Two white lawyers and a secretary, a white lady.

Q. And Stokes, was he present?

A. Yes, sir, and West.

Q. All right, now, in what manner was your statement given, did they ask you questions?

A. Yes, sir.

Q. Now, were these questions similar to the questions that you had gone over, that Stokes had gone over with you?

A. The same questions.

Q. They were the same questions?

A. Yes, sir.

Q. Did you give the same answers, or what answers did you give? Did you give the same answers that—

A. The same answers.

Q. That Stokes had told you to give?

A. Yes, sir.

Q. Were these answers true?

A. No, sir.

Q. Then it is your testimony that this statement here which you gave Mr. Mullins is not a true statement?

A. No, sir.

Q. Can you tell me why you made the statement if it's not a true statement?

A. Well, he told me wouldn't no law or nothing know nothing about it and I wouldn't have to go to jail or nothing and I would get paid for it.

Q. Was it the money that enchanted you into accepting this?

A. Yes, sir.

Q. How many thousand dollars did they promise you?
A. It wasn't no certain amount. They didn't make me no certain number of thousand. They said they was going to sue the town for so many thousand.
Q. Did they say who was going to sue the town?
A. Well, West was going to sue the town for so many thousands of dollars.
Q. Did he say who the parties in the suit were going to be—he was going to be the lawyer, but who were the parties going to be, do you know or did he tell you?
A. Who the parties was going to be—
Q. The parties to the law suit. If you don't know, just say you don't know.
A. I don't know what you mean.
Q. All right. After this statement was made where did you think you were going?
A. After the statement was made I thought I was going back to work.
Q. Well, what happened to you?
A. Well, after they got me to sign the statement that's the time they told me I had to go to jail.
Q. Did Mr. West make any promises to you about getting you off, getting you out?
A. Yes, they told me that. They told me not to worry because he would get me out.
Q. And did he tell you that or did somebody else tell you that?
A. He told me not to worry that he would get me out.
Q. When did he tell you that?
A. After they got me to sign this statement and told me I had to go to jail.
Q. And who arrested you?
A. I wasn't arrested. I went down there—Stokes took me down there to the jail.
Q. And you have been in jail ever since?
A. Yes, sir.
Q. All right, now, you say the statement you gave Mr. Mullins was not a true statement?
A. No, sir.

Q. Now, I want to refer you, Gable, to the date of June 14, 1969, which is the day that Aaron Liberty was murdered or was killed, and I'll ask you that morning where were you, do you recall?

A. I was working. I worked until twelve.

Q. Where?

A. Crosby Lumber Company.

Q. What time did you arrive back in Woodville?

A. I don't know exactly the time I come to Woodville but it was after dinner. It was in the evening time.

Q. You say evening, are you talking about afternoon now, or evening?

A. Yes, sir, afternoon.

Q. About what time of day was it?

A. Well, I worked until twelve and I come home and changed clothes. It had to be about three o'clock when I made it.

Q. All right, now, where did you go when you arrived in Woodville?

A. I went down there to Gladys' Cafe.

Q. Where is that?

A. It's down the street there, almost in front of the —down there right next to the jail down there.

Q. Who was with you when you went down there?

A. I went down there by myself.

Q. All right, and what did you do when you got to Gladys' cafe?

A. I went up to the counter and got me a beer.

Q. Did you drink that beer?

A. I was standing at the counter drinking the beer.

Q. How many beers did you drink? Standing at the counter?

A. I drank one and bought another one.

Q. Why didn't you drink it?

A. About that time Berk Turner walked in there and I bought him one.

Q. That name is Berk Turner, B-e-r-k, is that correct?

A. Yes, sir.

Q. He walked in Gladys' Cafe about the time you were buying your second beer?

A. Yes, sir.
Q. And you bought him one?
A. Yes, sir.
Q. And then what happened?
A. I walked over to the table and sat down.
Q. All right, who sat down with you?
A. Me and Berk Turner.
Q. What table were you sitting at, can you remember?
A. The second table next to the wall going in the store.
Q. On what side, right or left?
A. On the right side.
Q. The second table next to the wall on the right side?
A. Yes, sir.
Q. How long did you and Berk Turner remain seated there?
A. Oh, I disremember now, but it was three hours or better, longer than that. I disremember how many hours it was.
Q. Were you all just drinking and socializing?
A. Yes, sir.
Q. All right, now, when did you first get notice that there had been a shooting?
A. Well, I heard two shots.
Q. You heard two shots?
A. Yes, sir.
Q. Where were you when you heard them?
A. I was sitting down at the table drinking a beer.
Q. All right, what did you do when you heard them?
A. I said somebody is shooting—or it sounds like somebody is shooting out there. Berk Turner said, yes, it sounded like a shotgun. I said, it would have to be a shotgun, ain't no pistol in the world shoots that loud.
Q. Then what happened?
A. Well, a few minutes later some people come running from up the street and said there's some shooting up there and a few minutes later I think I said, let's walk up the street and see what happened up there and me and Berk Turner get up and walked up the street.

Q. All right, and when you arrived—you say up the street, now where did you go, what direction did you go? Did you go down Main Street toward the jail or up?

A. Coming back up this way.

Q. All right, what did you find when you went back up the street?

A. Well, when I went up there, when I made it up the street there, one or two people was putting Chambers in James Williams' car. I walked on up there and James Williams asked somebody to go with him and me and Berk Turner got in the car with him and went out there to the Centreville hospital.

Q. Who was driving?

A. James Williams.

Q. How many people were in the car?

A. Four of them.

Q. Who were they?

A. Me and James Williams and Berk Turner and Leon Chambers.

Q. All right, did you stay in Centerville very long?

A. Well, we stayed there a pretty good while, not too long.

Q. Had Leon Chambers been shot?

A. Yes, sir, he had been shot.

Q. Did you know at that time who shot him?

A. No, sir, I didn't.

Q. When did you find out who shot him?

A. Well, I seed in the paper—the paper come out Sunday and I was over here at Woodville and they was reading it in the paper and that's all I ever knew about it, what I seed in the paper.

Q. That's the first time you ever heard who did the shooting?

A. Yes, sir.

Q. All right, when you left Centerville, what did you do?

A. Come on back and went down there to Red Cain's.

Q. Now, where is that?

A. It's down here next to where the old school used to be.

Q. What kind of place is it?
A. It's a store and a cafe together.
Q. When did you go back to work after that?
A. That Monday. That Monday morning.
Q. And you were working at that time at Crosby?
A. Crosby Lumber Company.
Q. Now, from that time, from the time you went back to work until the day you were working in Louisiana and received the letter from your wife saying that she wanted to see you on some urgent business, that Stokes wanted to see you, did you hear anything or did you discuss the killing of Aaron Liberty with anybody?
A. No, sir.
Q. You didn't talk about it?
A. No, sir.
Q. You didn't learn anything about it?
A. No, sir.
Q. And what you are saying, you heard the statement read a few moments ago by Mr. Mullins, did you not?
A. Yes, sir.
Q. And you heard what your answers were to those questions when they were asked to you?
A. Yes, sir.
Q. And you are saying that these answers were untrue answers?
A. Yes, sir.
Q. And in fact I have gone over this statement with you in great detail, have I not?
A. Yes, sir.
Q. And you are familiar with what's in it?
A. Yes, sir.
Q. In this statement you say that you were across the street from Hayes' Cafe?
A. Yes, sir.
Q. When this commotion over C. C. Jackson actually commenced, started?
A. Yes, sir.
Q. But this is not true, is it?
A. No, sir.

Q. In fact, you were down in Gladys' Cafe, if I understand your testimony?

A. Yes, sir.

Q. Having a beer with Berk Turner?

A. Yes, sir.

Q. So that when you heard the two shots made you were down at Gladys' Cafe?

A. Yes, sir.

Q. Do you know James Williams?

A. Yes, sir, I know him.

Q. How long have you known James Stokes?

A. Well, not very long. I can't exactly tell exactly how long I have known him, but it's since I started going to the meetings.

Q. Now, according to your testimony, in rehearsing these answers that you were to give, James Stokes told you to say that you gave the gun to a Spokesman?

A. Yes, sir.

Q. What is a Spokesman, do you know?

A. No, sir, I don't.

Q. Did he tell you to say who you had given the gun to?

A. If they asked, he said to tell them I give it to Red Cain. Red Cain didn't know what I did with the gun. I just give it to him and told him to keep it for me.

Q. That's what he told you to say?

A. Yes, sir.

Q. Well, now, why didn't you put that in your statement, I don't see Red Cain's name in the statement anywhere?

A. James told me, he said if they asked in Court what Spokesman I gave it to, to say Red Cain, because Red Cain didn't know what I did with it. I just give it to him and told him to keep it for me.

Q. Now, your testimony is that when you made this statement you thought that you were first of all going to receive money?

A. Yes, sir.

Q. If you owned, as you put it, owned up to killing Aaron Liberty?

A. Yes, sir.

Q. And second of all, you would not be punished, that you would be set free to go back to your work in Louisiana?

A. Yes, sir.

Q. And these were the promises that induced you into making this statement?

A. Yes, sir.

BY MR. BRAMLETTE:

I don't believe I have any further questions.

CROSS EXAMINATION

BY MR. FORMAN:

Q. Gable, how old are you?

A. Thirty-three.

Q. How long have you known James Stokes?

A. Not very long. I can't tell exactly the time I knowed him but it was after I started attending the meetings.

Q. Attending the meetings?

A. Yes, sir.

Q. Now, those meetings, that was meetings you all called the Deacons?

A. Yes, sir.

Q. You belong to the Deacons?

A. Yes, sir, I was.

Q. You were a member of it?

A. Yes, sir.

Q. Are you now a member of the Deacons?

A. Well, I haven't been there.

Q. You haven't attended any meetings lately?

A. No, sir.

Q. And, of course, James Stokes is a Deacon, isn't he?

A. Yes, sir, he is.

Q. He's a Deacon?

A. Yes, sir.

Q. Is that where you met him, come in contact with him was joining the Deacons?

A. I had seed him a time or two before then, but that's when I come to know him.

Q. Where would you see him?

A. Well, I would see him at different meetings.

Q. And when you say different meetings, was that the meetings of the Deacons?

A. No, sir.

Q. Other meetings?

A. Yes, sir.

Q. You are also a member of the N double A C P?

A. Yes, sir.

Q. Well, then you would see him at those meetings, too?

A. Yes, sir.

Q. And knowing him and being thrown with him in that way went over how long a period of time?

A. Well, I would say around along two years or so.

Q. Two years or so?

A. Yes, sir.

Q. Now, is James Stokes, is he the head of the Deacons, or is he the leader of you Deacons?

A. Well, he is Spokesman. Now, I don't know what you call that.

Q. Well, is he the one that directs the meetings or handles the meetings, or swears you in?

A. He swore me in.

Q. He swore you in?

A. Yes, sir.

Q. So he is kind of head of the Deacons, isn't he?

A. Yes, sir.

Q. And you feel like that being a member of the Deacons that he is your leader, is that right, of the Deacons?

A. Yes, sir.

Q. Well, now, Gable, you say that he contacted you, as I understand it, you said that your wife wrote you to come on some business, is that right?

A. Yes, sir.

Q. And when you got that letter, in response to it you came home that week end?

A. Yes, sir.

Q. Now, what did your wife say to you about—did you ask her what that business was, or how did it come up about what you had come home for?

A. I asked her what she wanted and she told me that Sammy Hardin say Stokes told her to write for me. He wanted to see me on some business.

Q. Sammy Hardin, she told you that Sammy Hardin had told her—

A. That Stokes say write for me. He wanted to see me on some business.

Q. That Stokes had asked Sammy to get your wife to write you, he wanted to see you on some business?

A. Yes, sir.

Q. Now, that, you said was on a Saturday morning you got in, I believe you said about five or five-fifteen that Saturday morning?

A. Yes, sir.

Q. Did you see Sammy Hardin that day then, that Saturday that you come home?

A. Yes, sir, I seed him.

Q. Well, did he again refer this message to you, did he tell you that Stokes wanted to see you?

A. Well, I asked him what did Stokes want and he said he didn't know because he didn't tell him.

Q. He didn't know. You wanted to know from Sammy what Stokes wanted with you?

A. Yes, sir.

Q. And Sammy told you he didn't know?

A. He didn't know because he didn't tell him.

Q. All right, now, I believe you stated in your examination that you rode with Sammy and his daughter to Natchez to the hospital, is that this same Saturday now?

A. That's the same Saturday.

Q. And, of course, you went for the purpose of contacting Stokes?

A. Yes, sir.

Q. Now, did you know where Stokes' business was?

A. No, sir.

Q. How did you know where to go and how did you know how to get there?

A. I knowed where his station was because I had been buying gas from him.

Q. From his station?

A. Yes, sir.

Q. So then in other words you knew where Stokes' station was?

A. Yes, sir.

Q. So then you knew how to go to his station when you got to Natchez?

A. Yes, sir.

Q. And you did go to his station?

A. Yes, sir.

Q. Now, Gable, about what time of the day was that?

A. Somewhere around twelve o'clock.

Q. Twelve o'clock?

A. Yes, sir.

Q. When you got to the station, who all was at the station? Can you tell us?

A. Stokes and two boys that worked there at the station.

Q. Stokes and two boys?

A. Yes, sir.

Q. The boys worked there?

A. Yes, sir.

Q. Do you know any of these boys?

A. No, sir.

Q. And Stokes was there, you say, when you got there that Saturday morning?

A. Yes, sir.

Q. Well, what did you do, did you go up and say what do you want with me or what, just what happened when you got there?

A. Well, I walked up there and he said he had been looking for me.

Q. He said he had been looking for you?

A. Yes, sir.

Q. All right.

A. And me and him went on in that little ole room around side of the station there.

Q. Little old room?

A. Yes, sir.

Q. Was that a rest room or an office or—
A. No, sir, they keep oil and stuff in there.
Q. It's a little storage room?
A. Yes, sir.
Q. Where nobody else could hear you talking?
A. No, sir.
Q. Was anybody else in that room?
A. No, sir.
Q. All right, when you all got in the room and he said he had been looking for you and you went in the room, what happened then?
A. Well, when we went in that room there that's the time he asked me would I own killing Sonny Liberty.
Q. He asked you if you could own to killing Aaron—who?
A. Sonny Liberty.
Q. Sonny Liberty?
A. Yes, sir.
Q. That means he was trying to get you to say that you did the killing?
A. Yes, sir.
Q. What did you say when he asked you that?
A. I told him I couldn't do that because if I owned it they would send me to the pen, and he said no, they just wanted the statement, wouldn't no law or nothing know nothing about it and I wouldn't have to go to jail or nothing. They just wanted the statement.
Q. He said what now?
A. He said they just wanted the statement.
Q. They just wanted the statement?
A. Yes, sir, wont no law or nothing know nothing about it, it won't be turned over to no law or nothing, I wouldn't have to go to jail or nothing.
Q. Well, did he ever tell you who they was that wanted the statement?
A. No, sir, they is all he said.
Q. He said they wanted the statement?
A. Yes, sir.
Q. And that you would never have to go to the law or anything about it?

A. Wouldn't no law or nothing know nothing about it and I wouldn't have to go to jail. I would be ready to go back to work that Monday evening.

Q. He said what now, that you could go back to work that—

A. That Monday evening.

Q. That Monday evening?

A. Yes, sir.

Q. Now, Gable, you said something about that he promised you some money, how was he going to get the money?

A. He said he was going to sue the town for so many thousand dollars.

Q. Who was going to sue?

A. He said they was going to sue them. I don't know who was they.

Q. Did he name a figure?

A. Well—

Q. Did the name the figure that he was going to sue the town for?

A. He said he was going to—this is what he told me, he said he was going to sue the town for so many thousand dollars, I forget now how many thousand dollars it was, but it was in the thousand dollars, and he said he was going to divide it between the three, me, James Williams and Leon Chambers.

Q. He was going to dive—he was going to sue the town?

A. Yes, sir.

Q. You don't remember the number of thousands of dollars?

A. No, sir.

Q. But it was a big bunch of them presumably?

A. Yes, sir.

Q. And that you was going to get a third of it?

A. Yes, sir.

Q. And James was going to get a third, James Williams?

A. Yes, sir.

Q. And Leon Chambers?

A. Yes, sir.

Q. Now, those are the two things he promised you and told you that would take place, the law wouldn't know anything about it or wouldn't do anything about it?

A. Yes, sir.

Q. That you could go back to work Monday evening?

A. Yes, sir. I wouldn't have to go to jail or nothing.

Q. And that you would get a third of what they sued the town for?

A. He said they would divide it betwixt the three of us.

Q. Divide the money betwixt the three of you?

A. Yes, sir.

Q. Now, I notice you state that he had a pad and Mr. Bramlette showed you his tablet, something about like this size?

A. Yes, sir.

Q. Was he writing down or—

A. The writing already was on it.

Q. The writing was already on there?

A. I don't know what the writing was.

Q. And I believe you said it was written and not—he asked you if it was typewritten and you said it was written, written out in longhand?

A. Yes, sir, written with a pencil.

Q. Were they written in the form of questions, could you tell that, and answers, or just a statement?

A. It was a writing. I don't know what kind of writing it was.

Q. All right, tell me just hoe he talked to you about what to say, Gable, did he have the pad there in front of him while he was talking to you?

A. He had the pad laying down.

Q. And what did he say to you, just tell us exactly what he said, what did he tell you to say?

A. Well, he was talking about my owning the killing of Liberty.

Q. Yes.

A. He told me if they asked where I was to tell them I was sitting across the street. He said if they ask you

what happened, say they come and arrested him and he didn't want to be arrested—

Q. Who was that, that was C. C., the Jackson boy that they was arresting?

A. Yes, sir, and that I walked across the street, and he said they called for two more policemen. That was Geter and another policeman, I don't know who it was.

Q. He told you, now, to say that they called for two more policemen?

A. Yes, sir.

Q. All right.

A. And he said Liberty broke out of the crowd and got his shotgun.

Q. He said that to you?

A. Yes, sir, and he said when he come back he shot over my head and cut some limbs down and I got all to pieces and started to shooting.

Q. Let me see if I follow you just exactly, now, he said for you to say that you went across over the street to where they had this boy that they was handling pretty rough or something?

A. Yes, sir.

Q. And that Sonny wheeled and run and got a gun and come back?

A. Yes, sir.

Q. And shot over your head?

A. Yes, sir, and cut some limbs down in my head.

Q. Knocked some limbs down in your head?

A. Yes, sir.

Q. And then what were you to do then?

A. I got all to pieces then and got my gun and started to shooting.

Q. What was the statement just before then, you went all to pieces?

A. Yes, sir.

Q. You got excited or something, was that what he told you to say?

A. Yes, sir, that must have been what he meant.

Q. And you got your gun and went to shooting?

A. Yes, sir.

Q. But in your shooting you shot Liberty?

A. Yes, sir.
Q. You killed him, that's what your supposed to say?
A. Yes, sir.
Q. And that Chambers didn't do the shooting?
A. I didn't see Chambers.
Q. You didn't see Chambers?
A. Until I made the block and come back.
Q. Now, you say as he was going over that with you, was he looking at this statement as he was doing that?
A. He had it down before him.
Q. Down in front of him?
A. Yes, sir.
Q. He was looking down at it and telling you about the thing to say?
A. Yes, sir.
Q. Now, what did he tell you about after you had shot, what was supposed to have happened?
A. I made the block and when I come back they was putting Chambers in James' car and I went on to the hospital with them.
Q. Now, you did go to the hospital with them, didn't you?
A. I did go to the hospital, yes, sir.
Q. And he knew that?
A. Yes, sir.
Q. So you was supposed to say that after the shooting you made a block and come back there and went with them to the hospital?
A. Yes, sir.
Q. Well, now, Gable, what are you supposed to have done with the gun, did he say anything about the gun?
A. I was supposed to have give it to one of the Spokesmen and if they asked what Spokesman I was supposed to say Red Cain because Red Cain didn't know what I did with it and I just give him the gun for him to keep it for me.
Q. And that was who now, what Cain?
A. Red Cain.
Q. Red Cain, is that the same as Ed Cain?
A. Yes, sir.

Q. As a matter of fact, Gable, did you own a gun, a pistol, at that time?

A. No, sir, I didn't own a gun at that time.

Q. Did you have a pistol with you in town that day?

A. No, sir.

Q. All right, now, this is what he was going over with you, was that on that Saturday that you came there?

A. That was on that Saturday, yes, sir.

Q. All right, and then he told you—was anybody else present in there when he was going over that with you?

A. No, sir.

Q. When he got through going over it with you, what did he do, that Saturday now I am talking about when you first got there, did he contact anybody then?

A. No, he told me not to discuss it with nobody.

Q. He told you not to discuss it with nobody?

A. Yes, sir.

Q. Well, did you see George West, the lawyer, that Saturday?

A. Yes, sir, he come there that Saturday.

Q. When did he come, after or during the time that you all were having this conversation?

A. He come after.

Q. He come afterwards?

A. Yes, sir.

Q. How did he know to come down there or did he just happen to pick—

A. Stokes called him. James Stokes called him.

Q. James Stokes called him?

A. Yes, sir.

Q. And when he got there then what happened?

A. James Stokes met him around there by the drink machine. Then they called me and West told me to come back that Monday because they couldn't get around to it that Saturday because they had to have a secretary and all there.

Q. You say now that West met James Stokes around at the coke machine?

A. Yes, sir, at the station.

Q. Where were you, were you back in this little room?

A. I was standing round in front of the station.
Q. The front of the station?
A. Yes, sir.
Q. But you saw them meet up around there?
A. Yes, sir, I seed them there.
Q. Were you close enough to hear any conversation?
A. I wasn't close enough.
Q. How long did they talk there, did they have a pretty long conversation?
A. Not very long.
Q. And was it West that come to you and told you to come back?
A. Stokes called me around there where they was then.
Q. Stokes called you up there?
A. Yes, sir.
Q. Then it was West that told you—
A. To come back Monday.
Q. To come back Monday?
A. Yes, sir.
Q. Because they couldn't have anybody to take the statement?
A. Yes, sir.
Q. Now, did West in any way go over with you anything about the statement?
A. No, sir.
Q. He didn't do that?
A. No, sir.
Q. So you left then with the understanding that you was going to be back there Monday?
A. Yes, sir.
Q. Now, there is some conversation, some statements made here about being back up there Sunday, did you go back up there Sunday?
A. No, sir, I didn't go up there Sunday. It was Saturday and Monday.
Q. On Saturday and on Monday?
A. Yes, sir.
Q. Well, now, did you come back with Sammy Hardin that Saturday or how did you get back home?

A. No, sir, I come back home with my sister and the Smith boy that Saturday. I forget that Smith boy's name.

Q. Well, in other words, you didn't go back with Sammy Hardin, the boy that brought you up there?

A. No, sir, I didn't see Sammy no more after I got out of the car with him.

Q. All right, you went back home and did you talk to anybody down here about what they said to you?

A. No, sir, they told me not to discuss it and I ain't discussed it with nobody.

Q. Did you mention anything to your wife?

A. I ain't mentioned it to nobody.

Q. You didn't tell your wife about it?

A. No, sir.

Q. So Monday morning how did you get back up to Natchez then?

A. I went up there with my brother-in-law, Oscar Stewart.

Q. Oscar Stewart, your brother-in-law?

A. Yes, sir. That Monday.

Q. What time did you leave Woodville to go to Natchez that Monday morning?

A. It was early in the morning because my brother-in-law had a wreck that Saturday or Sunday, I disremember, and he was taking his car back up to the Oldsmobile place to have it checked.

Q. Well, did you get up there that morning, or was it afternoon or when that day?

A. It was that morning.

Q. Did your brother-in-law drive you by Stokes; and put you out?

A. No, sir, after he left the Oldsmobile place he come on up town and I got out in town there and walked to the station.

Q. Now, Gable, who was at the station when you got there that Monday morning?

A. Stokes and the boys that worked there.

Q. Stokes and the boy?

A. Them boys that worked there.

Q. Two other boys?

A. Yes, sir.

Q. Did you know those boys, I've asked you that, you don't know those boys?

A. No, sir.

Q. What happened when you walked up there on Monday morning then?

A. Well, we went back in that little room there.

Q. Same little room?

A. Yes, sir.

Q. Did he have that little pad out again?

A. Yes, sir, and went over it again.

Q. Went over what you were supposed to say again?

A. Yes, sir. Then he called West.

Q. He called West?

A. Yes, sir.

Q. All right.

A. West hadn't made it and me and Stokes got in the car and started back of the place and started down the street and West was walking coming to the station and we stopped and picked West up and went on around there to the office.

Q. You went on around to the office. Now, you saw Mr. Mullins, the attorney that testified that he took your statement, this gentleman right here, that's the man whose office you went to?

A. Yes, sir.

Q. And is this the other man that was there with you?

A. Yes, sir.

Q. Now, how long, Sammy, did he go over all of this again with you before he called West and you all went to these men's office?

A. Yes, sir.

Q. In detail about it. Now, did West, did he ever go over anything with you?

A. No, sir. West ain't never gone over anything.

Q. All right. So when you got to the office—let me ask you this, did you still understand that Monday morning that you were going to get a third of whatever they got out of suing the town, it was going to be divided betwixt three of you?

A. Yes, sir.

Q. You still, did they promise you, or did he that you were not going to have to go to jail or anything?

A. Yes, sir, it wouldn't be turned over to no law or nothing, I wouldn't go to jail or nothing, I could go back to work that Monday evening.

Q. That Monday evening as soon as you made the statement you could go on back to work?

A. Yes, sir.

Q. Now, when you all got around to the office, tell us just what happened then when you got around to Mr. Mullins' office where you gave the statement, just go into detail and tell us what happened there?

A. Well, me and Stokes and West, us went in the office.

Q. All right.

A. And later on them fellows there come in, them white fellows.

Q. They came in to where you all were?

A. Yes, sir, and I think that lady was the last one that come in there. I think she was.

Q. All right, then what happened?

A. Then they started.

Q. Asking you the questions?

A. Yes, sir.

Q. Mr. Mullins there asked you the questions?

A. Yes, sir.

Q. Now, of course, you had never seen Mr. Mullins before?

A. No, sir.

Q. It was the first time you had ever seen him?

A. Yes, sir.

Q. And Mr. Mullins didn't know anything about what was going on back down there with you and Stokes, of course?

A. No, sir.

Q. Then he asked you those questions in that statement and you signed it?

A. Yes, sir.

Q. And you tell us now that you are under oath here that that statement is untrue?

A. Yes, sir.

Q. You know that you did not shoot Aaron Henry?

A. Yes, sir.

Q. Or Aaron Liberty?

A. Yes, sir.

Q. And so far as you know, you know that Stokes knew you didn't shoot Liberty, too, didn't he?

A. He knew I didn't shoot him.

Q. He knew you didn't shoot him, didn't he?

A. Yes, sir.

Q. But, as I understand it, now, because he is the leader of your Deacons and he called on you and after offering you money and assuring you that you would not be placed in any custody, you agreed to go through with this thing?

A. Yes, sir.

Q. Did you ask them about this suit, did they give you any assurance that they was fixing to sue the town right away about this thing?

A. Well, he did say we was going to break this little town, and West said, yes, I already got my file made out.

Q. See now if I follow what you said. Stokes told you that they were going to break this little town?

A. That's right.

Q. And that West has already got the what made out?

A. He said files, I don't know.

Q. Files already made out?

A. Yes, sir.

Q. Did you understand that to mean the suit that they was fixing to bring, they had it prepared or something?

A. Yes, sir.

Q. Now, after you gave the statement I believe I understand that you and James and West left before you ever signed it and they carried you back down to Stokes' station?

A. Yes, sir.

Q. Now, did West go all the way around to the station with you?

A. No, sir, West didn't. I disremember now where West got out of the car at. He didn't go to the station.

Q. He didn't go back, they dropped him off, you all did?

A. Yes, sir.

Q. And you went back to Stokes' station and you stayed there for how long before you came back up to the lawyer's office?

A. Well, I got out at the station and I walked up town and come back to the station. I don't know exactly how long it was, but it was getting kind of late in the evening.

Q. Two or three hours, would it be that long a time in between?

A. About two hours or something like that.

Q. About two hours?

A. About that.

Q. All right, then how was it and when you got ready to go back how did you do that, did Stokes tell you, let's go, or—

A. He wanted us to go back around to the office and sign the statement.

Q. He said what, now?

A. He said, let's go back down to the office and sign the statement.

Q. He told you that?

A. Yes, sir.

Q. All right. Now, did West go with you then or was he already around there or what?

A. Let's see. Was he already around there, yes, sir, West was already around there, I am pretty sure, because didn't nobody go back in the car but me and Stokes.

Q. Just you two went back the second time?

A. Yes, sir.

Q. But he was there when you went in?

A. Yes, sir.

Q. And then what happened when you went in that time?

Well, we sat down there a while before—

Q. Before Mr. Mullins could see you?

A. Yes, sir.

Q. Then when you did get together, what happened then?

A. We went in the office there and he got the statement and read it. West read the statement to me.

Q. West read the statement to you?

A. Yes, sir, then I signed the statement.

Q. Now, I notice that you signed by an X, you can't write?

A. No, sir.

Q. You admit that you did mark that X?

A. Yes, sir.

Q. And that your signature was witnessed there by these fellows?

A. Yes, sir.

Q. All right, now, I believe you testified that up until this time, now, they had assured you that you would not ever have to go to jail, is that right?

A. That's right.

Q. After you signed the statement, where did they tell you, in the lawyer's office or where was it that you would have to go to jail?

A. After we left the lawyer's office.

Q. You left the lawyer's office?

A. Yes, sir.

Q. What did they tell you?

A. They told me that I had to go to jail.

Q. Now, who was with you when they told you that?

A. Me and Stokes and West.

Q. You and Stokes and West?

A. Yes, sir.

Q. Now, which one of them told you that you would have to go to jail, West or Stokes?

A. Stokes told me I had to go to jail.

Q. Stokes told you that?

A. Yes, sir.

Q. And what did he say when he told you that in addition to saying that you had to go to jail?

A. Don't worry, West will get you out.

Q. West will get you out?

A. Yes, sir.

Q. Well, did he caution you about not talking to the officers?

A. Yes, sir. He said, don't answer no questions.

Q. Don't answer no questions?
A. Yes, sir, unless it be with West.
Q. And as a matter of fact, Gable, when the Sheriff and I, they turned you over to the Sheriff, Mr. McGraw was up there, you know Mr. McGraw?
A. Yes, sir.
Q. You have known him all your life, haven't you?
A. Yes, sir.
Q. When they turned you over to Mr. McGraw and I and we tried to talk to you, you would not tell us those questions, would you?
A. No, sir.
Q. You told them that you was going to have to wait?
A. Yes, sir.
Q. Told us that, you refused to give us any statement, didn't you?
A. Yes, sir.
Q. Now, Gable, I want to go over with you again now, your activities on the day of this killing. I believe that I heard you state a while ago that when you knew about Chambers as being the one that had killed Sonny Liberty was on that Sunday after the shooting happened on Saturday, is that right?
A. Yes, sir. It was in the paper. I was over there in Adams County at one of them places over there and the lady that run the place was reading it in the paper.
Q. Lady in the place over in—
A. Adams County. She had a paper and she was reading it in the paper and that's the first I had heard who killed him.
Q. I see, the paper stated in there that Chambers was the man that was charged with the killing, or that did the killing?
A. Yes, sir, the paper stated it. As far as I know, I didn't know who did it.
Q. You didn't know, but that was your first knowledge of who killed him as far as being the one that did kill him was what that lady read in the paper to you?
A. Yes, sir.
Q. Was she reading it particularly to you or just reading?

A. No, sir, she was reading the paper. She didn't read it particular to nobody.

Q. Now, on that June the 19th, that is the day this killing happened, I believe you testified that you worked up until noon that day?

A. Yes, sir.

Q. And you went home and had your meals, I reckon?

A. Yes, sir.

Q And you said you changed clothes?

A. Yes, sir.

Q. And did you hitch hike a ride to town, or how did you get to town?

A. Well, I walked a piece and a white fellow come along in a pickup truck and I caught him.

Q. Caught him and come on in that way?

A. Yes, sir.

Q. But that was some time in the afternoon?

A. Yes, sir.

Q. And I believe your statement was in the evening, it must have been in the latter part of the afternoon?

A. Yes, sir.

Q. Where was the first place that you went when you got in town, In Woodville, if you recall, on that day?

A. The first place I went in was Gladys'.

Q. Was where?

A. Gladys's Cafe, the first place I went in.

Q. Gladys' Cafe?

A. Yes, sir.

Q. Now, where is Gladys' Cafe with reference to where the shooting occurred?

A. Gladys' Cafe is on down next to the jail down there.

Q. I didn't catch it.

A. Gladys' Cafe is down next to the jail.

Q. Down next to the jail?

A. Yes, sir.

Q. Her cafe is across the street from the jail, or is it on the same side of the street?

A. No, sir, across the street.

Q. Across the street. And the killing, of course, happened up here about a block away, didn't it?

A. Yes, sir.
Q. And about a block off of Main Street?
A. Yes, sir.
Q. Gladys' Cafe in on Main Street?
A. Yes, sir.
Q. In the same block, but you come up the street to the corner and turn and go down to the place where the killing was from Gladys' Cafe?
A. Yes, sir.
Q. You got there in the latter part of the afternoon and can you tell us who was in the cafe, do you remember anybody in particular in the cafe that day?
A. I didn't pay no attention to who was in the cafe.
Q. Where did you go when you first walked in there?
A. I walked up to the bar and bought me a beer.
Q. You bought a beer?
A. Yes, sir. I drank a beer standing up to the counter.
Q. Well, were you by yourself or were you with somebody?
A. I was by myself then.
Q. How's that?
A. I was by myself when I first went in there.
Q. By yourself when you first went in, well, how long were you in there before somebody else joined you, I am anticipating that's what happened?
A. Well, it was somewhere around thirty minutes, I drank this beer and I got another one and Berk Turner, he walked up there.
Q. Percy Turner?
A. Berk Turner, and I bought him one and me and him went over and sat at a table. That's where we was sitting.
Q. Now, Gable, did you ever leave that cafe from the time you went in until this shooting happened?
A. Just the time I left and went up there to see what happened up the street, that's the only time I left the cafe.
Q. You stayed in that cafe from the time you got there—
A. From the time I went in that cafe.

Q. Until the shooting was over with and you went up there to see about it, that's what you are telling us?

A. Yes, sir.

Q. I believe you testified that you heard two shots?

A. Yes, sir.

Q. And what was the conversation between you and—was it Turner you was talking to?

A. I said, it sounded like the boys is shooting up there. He said, yes, it sounded like a shotgun to me. He said it would have to be a shotgun, ain't no pistol in the world shoot that loud.

Q. Now, was anyone else at the table with you at the time?

A. Just us two.

Q. Just you two. Did you leave there then, you say, and went on around to see what happened after it was over with?

A. Yes, sir, me and Berk Turner walked up the street.

Q. All right, tell me what happened as you all went up there to where this scene happened, what took place?

A. Well, we went up there and the people was putting Chambers in James Williams' car.

Q. When you went up there, the people were doing what?

A. Two or three people there was putting Chambers in James Williams' car.

Q. Putting Chambers in James Williams' car?

A. Yes, sir.

Q. Did you know any of those people that were putting him in that car?

A. No, sir, I didn't recognize none of them. When we got right up to the car they put him in the car, and James Williams says, some of you all come go with me, so me and Berk Turner got in the car and went out to the Centreville, Hospital.

Q. You and Berk Turner got in James Williams' car with him to take Turner to the hospital?

A. To take Chambers.

Q. To take Chambers to the hospital.

A. Yes, sir.

Q. What part of the car did you get in?
A. I got in the front with James.
Q. You got in the front with James?
A. Yes, sir, and Berk Turner got in the back.
Q. Berk Turner got in the back with Chambers?
A. Yes, sir.
Q. Now, you all drove from there to Centerville, is that where you carried him to the hospital, in Centerville?
A. Yes, sir.
Q. Gable, what conversation took place as you all were driving down the road with Chambers, he was wounded, wasn't he?
A. Yes, sir.
Q. He had been shot?
A. Yes, sir. Well, there wasn't no conversation. We got way on out there on the road and James Williams' car was running bad and the only thing he said, he said the car was running badder than it ever run since he had it, and that he was going to put it in the shop tomorrow. He said it would have to be on Sunday, but I don't know what shop I'm going to take it to.
Q. Now, you tell us that there was no conversation that come up between you and James Williams or anybody about how this man got hurt that was laying there in the back of the car?
A. No, sir, no conversation.
Q. No conversation about it?
A. No, sir.
Q. Well, you didn't inquire about who shot him or was he shot or anything?
A. No, sir.
Q. Did you know he was shot Gable?
A. Yes, sir, it looked like his brains was coming down his face, I knowed he was shot.
Q. You knew he was shot?
A. Yes, sir.
Q. But you didn't ask any questions of James, who did it or anything?
A. No, sir.

Q. And James didn't volunteer any information about it?

A. James didn't mention it.

Q. All right, when you all got to the hospital were there any conversations there that took place, did the doctor come out, or did you all take him in to the doctor, or what?

A. Yes, sir, the doctor come out. I reckon he was a doctor. He had white on and they went around and took him out. There was two led him in. I don't know who the other one was, but they led him in. They didn't carry him in on a stretcher, they got one on each side of him.

Q. Well, Gable, did the doctor ask who shot this man?

A. Well, if he did, he asked it inside and I didn't go inside, I stayed outside.

Q. He didn't ask it outside, he didn't ask anything about it, who did this or anything?

A. No, sir.

Q. Just you all carried him on in, who carried him in, did you carry him in?

A. No, sir, the doctor and another fellow I don't know. I can't place who the other fellow was, but the doctor was one of them.

Q. You don't recall whether it was James or Turner?

A. It was not James.

Q. Somebody there at the hospital?

A. I don't know whether he was at the hospital or not, but it was somebody and they helped him in the hospital.

Q. All right, when they did that what happened then, Gable, after you all carried him in the hospital?

A. Well, there was somebody down there, the car was broke down and we went down there to the car where they was and after they got the car started, well, we went down there where they was.

Q. Who did, now, that was you and Turner?

A. I don't know whether Turner went, I just can't place who went there, but some of us went there.

Q. All right, and how long did you all stay there before you left Centerville?

A. Well, us didn't stay too long, not very long.
Q. Did you and Turner come back with Williams?
A. Yes, sir.
Q. Back to Woodville?
A. Down here to the Cain place, Red Cain's place. That's where went when we come from Centerville.
Q. When you came from Centerville, you came to Red Cain's place?
A. Yes, sir.
Q. That's the man that you are supposed to have given the gun to, is that right?
A. Yes, sir.
Q. And, of course, you didn't do that?
A Yes, sir, that's the man.
Q. How's that?
A. I said, yes, sir, that's the man I was supposed to have give the gun to.
Q. But you didn't give him no gun, did you?
A. No, sir.
Q. Well, when you got in Cain's place was there any conversation about this shooting that happened?
A. No, sir. If it was, I know I didn't hear it, because I got out of the car and went on side the place.
Q. And there was no questions going on in that place that night, no inquiry asked about it?
A. No, sir, if it was I didn't hear it.
Q. Well, now Gable, after that you were working at Crosby?
A. Yes, sir.
Q. That was in June. When did you go back to Crosby to work?
A. That Monday.
Q. That Monday?
A. Yes, sir.
Q. Now, from that time until your wife wrote you that she had some business, were you ever contacted by James Stokes about this killing?
A. No, sir.
Q. The first time you were contacted by him was as you told us was in response to that letter and you going up there to see what he wanted?

A. Yes, sir.

Q. And you tell this Court under your oath that you had no idea what he wanted to see you about when you left to go up there and find out what he wanted to see you about?

A. No, sir, I didn't.

Q. And you tell us the truth under oath that if you lie about it you are subject to perjury charges, you know that, don't you, Gable?

A. Yes, sir.

Q. You tell me as you sit there on that stand under oath, that you did not do the things that this statement and that Stokes and them had you to say?

A. No, sir.

Q. You did not do that?

A. No, sir.

Q. You did not shoot Aaron Liberty?

A. No, sir.

Q. And you tell me under your oath that everything that was put in this statement was the things that Stokes himself and Stokes alone told you to say?

A. Yes, sir.

Q. And that you know that Stokes knew that you did not shoot Aaron Liberty, he knows that don't he?

A. Yes, sir.

Q. And, of course, you know you didn't shoot him?

A. Yes, sir, I know I didn't shoot him.

Q. Any of those questions that Mr. Mullins asked you, were any of those same questions the questions that Stokes asked you, or was that just a statement that you was to make to Mr. Mullins and them when you got up there?

A. He asked me them questions. I started talking and made that statement, that's right. Yes, sir.

Q. In other words, Mr. Mullins, you are telling me that he did not ask you the same questions that Stokes asked you?

A. No, sir, not all the questions. No, sir.

Q. That all the statement that he was asking you to do was to just make the statement that you were at these places and you did these things?

A. Yes, sir.

Q. And that's what you were going up there to do at Mr. Mullins' place?

A. Yes, sir.

Q. But Mr. Mullins chose to ask you questions about it?

A. Yes, sir.

BY MR. FORMAN:

Your Honor, I believe that's all at this time. Of course, I reserve the right to further cross examine this witness.

BY MR. BRAMLETTE:

I have no further questions.

(witness excused)

AND THEREUPON, JAMES STOKES, having been recalled as a witness, and having previously been duly sworn, testified as follows:

BY MR. FORMAN:

Your Honor, I would like for the record to show that at this time, James Stokes, being recalled by the Attorney for the Defendant for cross examination, that I, as District Attorney, at this time warn Mr. Stokes, who now sits on the stand, that anything that he may say could and would be used against him in a court of law and I feel like at this time I should warn this man for that purpose because of the turn of events as they have taken place so far in this trial that he may be subject to criminal charges.

BY THE COURT:

I am going to take this under advisement and I will render an opinion later. The Defendant will be remanded to jail.

(end of hearing—1:45 p.m.)

CERTIFICATE

I, Anabel Y. Maxie, Official Court Reporter in and for the Sixth Circuit Court District of Mississippi, do hereby certify that the above and foregoing 116 pages contain a true and correct transcript of my stenographic notes and tape recording of the aforestyled preliminary hearing heard before Hon. Jesse Moore, Justice of the Peace of District One of Wilkinson County, Mississippi, on Tuesday, December 9, 1969.

Witness my signature this the 9th day of March, 1970.

/s/ Anabel Y. Maxie
ANABEL Y. MAXIE
Official Court Reporter
Sixth Circuit Court District
1016 Main Street
Natchez, Mississippi 39120

FILED:
October 20, 1970

By /s/ H. K. Whittington
Circuit Clerk

[fol. 1]

IN THE CIRCUIT COURT
OF AMITE COUNTY, MISSISSIPPI

OCTOBER TERM, 1970

C.# 1647

STATE OF MISSISSIPPI, PLAINTIFF

vs.

LEON CHAMBERS and JAMES WILLIAMS, DEFENDANTS

* * * *

[fol. 5] BY MR. MULLINS:

May it please the Court, this is a motion for a subpoenae duces tecum, and I would read it to the Court at this time.

BY THE COURT:

All right, proceed.

* * * *

[fol. 8] BY THE COURT:

Counsel, each of you has the power of process to bring any witness you want before you. You have gone a little bit further with a subpoenae duces tecum to help you to obtain or find evidence that you think is in existence. I think I had better sustain the motion.

BY MR. FORMAN:

I would not want him to be in a position to put him on as a hostile or adverse witness.

BY THE COURT:

He has a motion for a subpoenae duces tecum to find whatever evidence is in existence, but as far as these other matters, evidentiary matters, are concerned, I could not say that, or rule on that now, but we will if it should come up during the trial. To say that he is an adverse witness at this time, I don't see any reason why the Court should now make that decision for you. You can

make it yourself, and I'll delay your ruling as far as that is concerned at this time, but certainly you are entitled to a subpoenae duces tecum.

BY MR. SMITH:

As I understand the Court's ruling, if we call this [fol. 9] man, in view of what we have attached to our motion for the subpoenae, the Court will not preclude us from complaining of surprise at that time? Based on what we have presented, we have shown that we feel he is a hostile witness.

BY THE COURT:

Your motion says you are not surprised. The question is whether or not you can offer this testimony when you find it, and we will take it up at that time.

BY MR. SMITH:

We are asking that we be permitted to question him as an adverse witness.

BY THE COURT:

We'll reserve ruling on that and made that determination during the trial.

This concluded the hearings on motions in the aforestyled and numbered cause on Tuesday, October 20, 1970, the next proceedings in said cause being held on Monday, October 26th, 1970.

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[fol. 49]

DIRECT EXAMINATION

BY MR. FORMAN:

Q. State your name for the record, please?
A. Herman M. Anthony.

* * * *

[fol. 54] Q. Now, you tell this Jury then, Herman, so far as you know who shot Aaron Liberty, you can't tell them who shot him?
A. I can't tell them who shot him.

Q. But you do know the man that went down that alley that he shot at?
A. That's right.
Q. And who was that?
A. Leon Chambers.
Q. Is he in this Court room?
A. Yes, sir, there he sits there.
Q. All right, now, Herman, you say, I believe you [fol. 55] used the words he fell so hard?
A. I did.
Q. Did you think he had been killed?
A. I thought he was.
Q. I'll ask you this, now, when you saw Aaron Liberty fire at him with that gun, did he make a deliberate aim at him?
A. He did.

BY MR. SMITH:

If the Court please, we object to leading.

BY THE COURT:

Sustained.

BY MR. FORMAN:

Q. Tell this Jury just how he did that?
A. He said, I am shot, he raised his gun and aimed, he aimed high over some people and let those folks scatter. When he fired the first shot somebody fell over against the wall out of the way and he aimed directly.
Q. He knew who he was shooting at?

BY MR. MULLINS:

Now, if the Court please—

BY MR. FORMAN:

Q. Did he know who he was shooting at?
A. I would say he did, the way he acted.

BY MR. MULLINS:

We object to that, if the Court please.

BY MR. SMITH:

He couldn't possibly know what Liberty knew or didn't know.

* * * *

[fol. 71]

DIRECT EXAMINATION

BY MR. FORMAN:

Q. Will you state your name for the record, please, sir?

A. Gordon H. Geter.

Q. Mr. Geter, what official position, if any, do you hold in Wilkinson County, Mississippi?

A. I am Constable of the Fourth District and Deputy Sheriff.

* * * *

[fol. 75] Q. Now, when you say Son, who are you talking about?

A. I am talking about Aaron Liberty.

Q. All right.

A. I was going back in his direction, sir, and when I got maybe a step or two, Neil hit me on the shoulder and that's when the firing commenced behind Son. That's when I saw Leon Chambers shooting Son.

Q. You saw this Defendant here shooting Son?

A. Yes, sir.

Q. And Son is who?

A. He is a policemen.

Q. And what's his name?

A. Aaron Liberty.

Q. All right.

A. He was shooting Aaron Liberty in the back. Well, Aaron Liberty went to twisting southward and he came around and when this man—it was just a volley of shots, I would say five or six, I didn't count them at that time. I was in the line of fire and I didn't take up that much time counting them, and when Leon Chambers broke down the alley to run, Aaron fired one shot in this position and then the next shot he came up and he made a step or two and he pulled down on him and I thought the man was cut half in two, to tell the truth, and at

that time I tried to summons the rest of the officers and Herman Anthony—excuse me, at that time when Son fired the second shot from the double barrelled sawed off shotgun, Herman Anthony came, that was the first time I seen him, and grabbed Aaron Liberty by the arm, the [fol. 76] wounded policeman, and led him back. I had drifted southward, I guess, and he led him back and he brought him to me and he said, Aaron Liberty, the wounded policeman, said to me, he said, Mr. Geter, I am shot. I told him, lay down, lay down. When he went down he had his gun in this position and when he went down he got about so high off the ground and he slumped then and the gun broke, it broke part of the gun. Now, I never did take time to see what had broke. Well, at that time I tried to get the rest of the men, I don't know whether they heard me or not, probably they was conscious of what was going on and we seemed to get in a huddle, and we got Son in the car, and James Anthony and I stayed behind and got in my car and went on to the Sheriff's office to summons more help.

Q. Now, Mr. Geter, back when you say that you were approaching Aaron Liberty, as I say, at the time that he got shot, you were going towards him?

A. Yes, sir, I was walking slowly back in his direction.

Q. Were you facing him?

BY MR. MULLINS:

Now, if the Court please, counsel is leading the witness.

BY THE COURT:

Sustained.

BY MR. FORMAN:

Q. What happened when you say you saw or heard the volley of shots?

A. Well, the people around Leon Chambers just fell up against the wall there, they just flew. James Williams run. He was standing right by the policeman. He [fol. 77] ran. It left those two men setting up there. Leon Chambers was the only man that broke and run

and at that time I thought he was fixing to get away but the policeman got him.

Q. Did you go down and examine Leon Chambers when he fell?

A. No, sir, at the time I felt it would be kind of suicide for me to do that and I figured he was shot half in two anyway and I was more concerned about the wounded man.

Q. Now, how long have you known Leon Chambers, tell this Jury?

A. Sir, I have known him for the last, I would say four or five years. He was once a policeman in Woodville.

Q. How's that?

A. He was once a policeman there in Woodville.

Q. Leon Chambers was?

A. Leon Chambers, yes, sir.

Q. Now, you tell this Jury there's no doubt in your mind about who it was—

BY MR. MULLINS:

Now, if the Court please, counsel is leading the witness, and we object to it.

BY THE COURT:

Sustained.

BY MR. FORMAN:

Q. Are you positive of who the man was that shot Aaron Liberty?

A. Yes, sir, I am positive.

Q. Who was that?

A. Leon Chambers.

* * * *

[fol. 85] Q. And you saw Chambers with the pistol in his hand firing into this man, is that your testimony?

A. Yes, sir.

Q. All right, sir, then he turned and ran?

A. Yes, sir.

Q. All right, now, when he turned and ran, what did Officer Liberty do?

A. He wheeled on around and fired.

Q. Had he moved any towards you?

A. No, sir, he just turned to the south, he came on around and fired one shot. Then he made a step or two, I didn't count the steps, I was in the line of fire, so I was worried about old number one at that time, and then when he come up—I am left handed, sir, but I assume he shot from his right shoulder, and the second [fol. 86] shot he shot this man down and I thought he was blowed all to pieces.

Q. Now, your testimony is that you saw Chambers from the time that he was shooting the man until he fell—

A. That's right.

* * * *

[fol. 87] Q. All right, now, Mr. Geter, how far away were you from Liberty when he was getting shot?

A. I would say twelve to fifteen feet, sir.

Q. All right, sir, how far away was Chambers from him as he was doing the shooting?

A. I would say three to four feet, sir.

Q. Three to four feet?

[fol. 88] A. Yes, sir.

Q. Did you see the gun in his hand?

A. Yes, sir.

Q. Was his arm extended?

A. His arm was extended to a certain extent. I could see the motion of the gun.

Q. You could see the recoil of the gun?

A. Yes, sir, and I don't know how many times he done that because I was worried about old number one.

Q. I understand that, now, just answer my questions and we'll get right along with this. You were twelve to fifteen feet from Liberty?

A. Right.

Q. And I take it Liberty was sort of between you and Chambers?

A. Yes, sir.

* * * *

[fol. 90]

DIRECT EXAMINATION

BY MR. FORMAN:

Q. Will you state your name for the record, please, sir?

A. Waldo Welch.

* * * *

[fol. 94] Q. Now, Mr. Welch, again I'll ask you how close were you to Aaron Liberty at the time that he got shot, if you can tell this Jury?

A. Within eight feet.

Q. Within eight feet?

A. Yes, sir.

Q. I'll ask you to tell this Jury whether or not immediately before or during the time that he was shot, did you see the Defendant Leon Chambers?

A. I didn't understand you.

Q. At the time that Aaron Liberty was being shot, either before or during the time he was being shot did you see the Defendant Leon Chambers?

A. Yes, sir.

Q. What was he doing and what did you see him do?

A. He had come from the corner of the building, which would be Jack's Coffee Shop, from the alley. He broke his right hand down, and, of course, that's when the shots began, five or six shots.

Q. Who did you see do that?

A. Leon Chambers.

Q. Do you see him in this Court Room?

A. Yes, sir.

Q. Is he one of the Defendants here?

A. That's right.

Q. Did you see the gun in his hands?

A. I did not see the gun in his hand.

[fol. 95] Q. All right, how many times did that gun fire, to your knowledge?

A. Five or six times.

Q. Tell what Aaron Liberty was doing when that gun was firing?

A. He was flinching.

Q. And what was it, if anything, that he said to you —Aaron Liberty?

A. Aaron told me that he was shot, and I told him to kill him.

Q. Now, did you see the Defendant when he went down in that alley?

A. I seen him when he broke and run down the alley.

Q. Was that immediately before—

BY MR. MULLINS:

Now, if the Court please, counsel is leading the witness. We object to that.

BY THE COURT:

Sustained.

BY MR. FORMAN:

Q. When was that with reference to when Aaron Liberty fired the shots at him?

A. He run down the alley and when Aaron told me that he was shot, I told him to kill him and he stepped back to the corner of the building, which was two to three steps, and fired his gun at him going down the alley.

Q. How many times did he fire?

A. Twice.

Q. And I believe you testified you saw the Defendant laying in the alley?

[fol. 96] A. That's true.

Q. Now, how far did Liberty move from the time he was shot to where he fell?

A. How far?

Q. Yes, roughly how far did he move?

A. I would say forty feet.

Q. Before he fell down?

A. Yes, sir.

Q. How many of you did it take to put him in the car?

A. James Forman, myself, Herman Anthony and one

other. I don't remember who he was. I didn't even take time to look.

Q. Now, tell this Jury when it was that you received the bullet wound that you testified about?

A. When I come up out of the scuffle and turned around to aid Aaron Liberty, which I would have been facing south or southeast down the street.

Q. It was after then, as I understand it, that Aaron Liberty had been shot that you received your wound?

A. Yes, sir.

Q. Do you know who it was that fired the shot at you ?

A. I do not.

Q. Have you ever been able to determine that?

A. No, sir.

* * * *

[fol. 98] Q. You did not, when was the first time that [fol. 99] you did see the Defendant Leon Chambers on that occasion?

A. When he come from behind the building.

Q. Come from behind the building, and what did he do when he come from behind that building?

A. He throwed his right hand down and that's when the gun began to fire.

Q. And what was Aaron Liberty doing when that gun was firing?

A. Flinching.

* * * *

[fol. 150]

DIRECT EXAMINATION

BY MR. SMITH:

Q. Now, Samuel, I want you to speak up where the Court can hear you, the Judge and the Jury and the Court Reporter. Would you state your name, please?

A. Samuel Hardin, Sr.

Q. Where do you live?

A. Woodville, Route One, Box 800 B one and a half.

Q. Woodville, Mississippi?

A. That's right.

Q. Now, Samuel, were you in Woodville in June of last year when Aaron Liberty was shot and killed?

A. I was.

Q. Were you at or near the scene of this shooting?

[fol. 151] A. I was.

Q. Did you see who shot Aaron Liberty?

A. I did.

Q. And who was that?

A. Gable McDonald.

Q. Gable McDonald?

A. Right.

Q. Now, Samuel, where were you when you saw this shooting?

A. I was out in the street, right side of a car. I don't know what kind of car it was, but I was right out in the street.

Q. All right, now, where was that car located?

A. Well, it was just about in front of the meat market there now. Right there that drive that come out there, between that drive and the meat market.

Q. And where was Gable McDonald when he did the shooting.

A. Gable McDonald was standing close against this little coffee shop there, standing up close against the coffee shop.

Q. All right, is that Jack's Coffee Shop?

A. Correct, that's Jack's Coffee Shop.

Q. Did you see the policeman while he was being shot?

A. Yes, sir.

Q. And prior to this time, Samuel, Had you known Gable McDonald?

A. I had.

Q. How long had you known him?

[fol. 152] A. Practically all his days. We growed up together from little boys.

Q. You were raised up with him?

A. Yes, sir.

Q. Were you a neighbor of his?

A. We were not exactly neighbors, but we all went to church together and around school places together.

Q. I see, and there's no doubt in your mind that that was Gable McDonald that fired that gun?

A. There is no doubt at all, I know it was.

Q. Now, then, following the shooting, Samuel, what did you do?

A. After the shooting was over with, I in Hayes Cafe and told him that Mr. Chambers had been killed. That's what I did, and he said, oh, no. I said, yes, he's been killed, he been shot right in the back of the head.

Q. All right, did you see Chambers when he was shot?

A. Yes, sir.

Q. All right, after you went in Hayes Cafe, what did you do?

A. Come back out, and when I come back out some of the fellows was standing around Mr. Chambers and said, he ain't dead yet. I said, oh, he bound to be dead. They said, well he ain't. So some of them said, we need to get him to the hospital, and I said, well, whoever carry him, I'm going along with them. So Mr. James come in his car—

Q. Now, who is that?

A. Mr. James Williams, he come in his car. I don't know where he went and got it from or nothing, he come in his car and I don't know who put Mr. Chambers in the car, but I know three or four of the fellows put [fol. 153] him in the car. I didn't touch him myself, so they took off. I didn't have nobody to ride with me, so I got John Young and Sonny Almond to get in the car with me and we followed Mr. James over to the hospital where they carried Mr. Chambers.

Q. And where was the hospital?

A. In Centerville.

Q. How long did you stay in Centerville?

A. Well, I don't know, sir, exactly, but it wasn't too long because they wouldn't let any of us go in or nothing of the kind. They just carried him in, I don't know who carried him in the hospital. The words they told me, they said, well, he walked in there. I said, no, he couldn't walk, and they said, yes, he walked in. We

set around and waited fifteen or twenty minutes and left and came back to Woodville.

Q. All right, now where did you go when you came to Woodville?

A. To Ed Cain's place.

Q. Ed Cain's place?

A. Yes, Ed Cain's place.

Q. Is that located in Woodville, Mississippi?

A. Yes, sir, it is in the City Limits, if I ain't mistaken.

Q. Now, when you got to Ed Cain's did you see Gable McDonald?

A. Yes, sir.

Q. Did you see Gable McDonald with any weapon?

A. Not right at that time, I didn't.

Q. Did you see him at any time that night with a weapon?

[fol. 154] A. I did.

Q. And what kind of weapon was that?

A. It was a thirty-eight pistol.

Q. A thirty-eight pistol?

A. It was a thirty-eight.

Q. Can you describe that pistol?

A. It looked like it could have been a blue steel gun, but it had kind of rusted a little and it had a white and brown striped handle on it.

Q. A white and brown striped handle thirty-eight?

A. Yes, sir.

Q. All right, who had that pistol when you saw it?

A. Gable McDonald.

Q. Do you know what he did with that pistol?

A. Yes, sir.

Q. What was that?

A. I left my pistol. I had a pistol too. I left my pistol at Howard Wyatts house, a fellow that lived right across from Ed Cain's place.

Q. And that's in Woodvile?

A. That's in Woodville, and Gable McDonald left that particular pistol at the same place.

Q. At whose house now?

A. Howard Wyatt.

Q. Now, then, after you left your pistol at Howard Wyatt's and Gable McDonald left this thirty-eight with a white handle at Howard Wyatt's—

BY MR. FORMAN:

I beg your pardon, now, I didn't hear him say white handled pistol, Mr. Smith.

[fol. 155] BY MR. SMITH:

Q. Well, white and brown handled, I believe you said?

A. That's right, white and brown handled thirty-eight.

Q. All right, after you all left these pistols at Howard Wyatt's, did you see Gable McDonald any more that night?

A. I did.

Q. And, when was that?

A. When I got ready to come home, he come and asked me, he said, can I go home with you. I told him, yes, you can go home with me.

Q. And did he ride home with you?

A. He did.

Q. All right, now, on that ride home did Gable McDonald tell you that he had killed Aaron Liberty or shot him?

A. He did.

BY MR. FORMAN:

Your Honor, we object to this as heresay testimony.

BY THE COURT:

Sustained.

BY MR. TUCKER:

We ask the Jury to ignore his answer.

BY THE COURT:

The Jury will be so instructed at this time.

BY MR. SMITH:

Q. All right, now, after this night of the shooting, Samuel, did you see either Gable McDonald or that white handled pistol again?

[fol. 156] A. Yes, sir, I did.

Q. And where was that?

A. At Albert Carters house.

Q. Do you know whose pistol that white handled pistol was?

A. I know who Gable say it was.

BY MR. FORMAN:

Now, we object to who he said it belonged to.

BY THE COURT:

Sustained.

BY MR. SMITH:

Q. What time, Samuel, did you see McDonald at Albert Carter's house the next morning?

A. Somewhere between eight and nine o'clock.

Q. Was Albert Carter at home?

A. He was.

Q. And Gable McDonald was there?

A. Gable McDonald was there.

Q. Was he there when you got there?

A. He was there when I got there.

Q. Now, Samuel, we have got a plat which has been introduced in evidence showing the area of the shooting of Aaron Liberty, showing the intersection of Main Street and First Street West in Woodville, and I would like for you to come over with this pencil and mark with an H where you were at the time of the shooting?

A. (Witness marks on plat.)

Q. All right, you have marked that with an X. All right, now, where was Gable McDonald when you saw him shooting?

A. Right here. Put a X here?

[fol. 157] Q. Put a Y, please.

A. (witness marks on plat)

Q. All right, you have marked an X where you were and a Y where McDonald was?

A. Yes, sir.

* * * *

[fol. 160] Q. You tell this Jury that Gable McDonald did the shooting?

A. Right.

Q. And that he shot him with a thirty-eight pistol?

A. No, sir, I did not.

Q. Well, you said he had a thirty-eight pistol?

A. Yes, sir, he did.

Q. That's the only pistol you saw; now, Samuel, I'll ask you did you go down there to help when they first discovered that Leon Chambers wasn't dead laying there in that alley?

A. I was already there.

Q. Already there?

A. I was already there.

Q. Who picked the gun up that way laying there by his hand when you went down there?

A. Wasn't no gun laying there.

Q. Wasn't no gun laying there?

A. Wasn't none laying there.

Q. You didn't see no gun there?

A. I didn't see nairn.

Q. But you don't tell this Jury there wasn't one around his hand or in his hand when he fell, do you?

A. Wasn't nairn around there no where when I went there.

Q. Now, how long was it after he was laying there in that alley before you found out that he was still living?

A. When he was still living?

Q. Somebody told you he wasn't dead, as you said [fol. 161] a while ago?

A. That's after I had went in the cafe and come back out.

Q. You had gone in the cafe and come back. Now, he had been laying in there all that time before you found out that he wasn't dead?

A. That's right.

Q. Then you all took him and you carried him to the hospital?

A. Right.

Q. And you tell this Jury that Gable McDonald shot him?

A. I did.

Q. You tell this Jury that the only gun you ever saw him with was a thirty-eight caliber pistol?

A. No, sir, I won't tell them that.

Q. Gable McDonald?

A. I won't tell 'em that was the onliest gun I ever saw him with.

Q. That's the only gun, I say, that you saw him with?

A. No, sir, it was not that night. It wasn't the only gun.

Q. Well, you told your man on direct examination—

A. I didn't tell him—

Q. That what you saw him with was a thirty-eight?

A. I told him that I saw him with a thirty-eight after we had been over there and come back.

Q. Been over where?

A. Over to the hospital and come back. That was [fol. 162] way after the shooting.

Q. Way after the shooting?

A. Yes, sir.

Q. Describe it, now?

A. It was white with dots all over the handle. White striped I would call it.

Q. How long did you say you have known Gable, all your life?

A. That's right.

Q. Now, Samuel, did you and Gable—you say you belong to the same church?

A. No, sir, I did not.

Q. Did you say you went to the same church?

A. Right.

Q. Did both of you belong to the Deacons for Defense?

A. At one time we did.

Q. Both of you did, and you attended the meetings for the Deacons for Defense?

A. I do.
Q. Who is the man that is the head of the Deacons for Defense?

BY MR. MULLINS:

Now, if the Court please, we object to that. There is no issue here about that.

BY THE COURT:

Sustained.

BY MR. MULLINS:

And we ask the Court to instruct the Jury to disregard any reference to any Deacons for Defense.

[fol. 163] BY THE COURT:

Membership in it would be admissable. Overruled.

BY MR. FORMAN:

Q. How many shots did you hear fired?
A. Well, I don't know exactly how many, but it was somewhere like five or six shots, that's from a pistol, and two shots fired from a shotgun.
Q. Did you hear any other shots?
A. Yes, sir.
Q. How many more did you hear?
A. One.
Q. One more is all?
A. One more is all I heard.
Q. Who shot that shot, if you know?
A. I don't know, sir, who shot it.
Q. But you know who shot the first five vollies?
A. Yes, sir.
Q. And you know who shot the two shotgun shots?
A. Yes, sir.
Q. Who shot the first shots?
A. Gable McDonald.
Q. Who shot the second shots?
A. Aaron Liberty, the man who got killed.
Q. The man who got killed. Now, Aaron Liberty was a policeman, wasn't he, there in town?

A. Yes, sir.

Q. And had been a policeman there for some time?

A. I don't know, sir, exactly how long he had been there, but I know he was a policeman.

Q. When did you say you first come in contact with [fol. 164] Gable McDonald that night?

A. Well, me and Gable had been together some time that day and after that shooting was, I come back in contact after we had went to Centerville and back to Ed Cain's.

Q. You hadn't been with him for the last hour or two before this shooting happened?

A. No, sir.

* * * *

[fol. 179]

DIRECT EXAMINATION

BY MR. MULLINS:

Q. Will you state your name, please.

A. Gable McDonald.

* * * *

[fol. 190] Q. Gable, do you remember on or about November the 10th of last year, that was 1969, that you came to my office in Natchez, Mississippi?

A. I remember when I came to your office, but I can't tell you what date it was.

Q. But if I said it was November the 10th, 1969, that would be about right?

A. I don't know what date it was, but I know it was on Monday.

Q. Well, was it in the autumn, the autumn time or winter time, the summer time or what?

[fol. 191] (OUT OF HEARING OF JURY)

A. It was kind of in the winter time.

Q. And you came to my office in Natchez?

A. That's right.

Q. And do you remember, Gable, me asking you some questions and you giving me some answers?

A. Yes, sir, I remember it.

Q. And then those questions were written down by a young lady and were read to you and you marked your X on them, do you remember that?

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

BY MR. MULLINS:

I ask that this be marked Defendants' Exhibit to the testimony of this witness.

BY MR. FORMAN:

It hasn't been properly identified, may it please the Court.

BY MR. MULLINS:

Well, I'll further identify it. I was having it marked for identification.

BY THE COURT:

Do you want to further identify it now or have it marked?

BY MR. MULLINS:

I will further ask him.

BY THE COURT:

All right.

BY MR. MULLINS:

Q. Now, then Gable, on November the 10th, 1969, [fol. 192] when you came to my office and gave this statement and I asked you these questions and you gave me certain answers, who was present at that time, would you tell us who was present?

A. James Stokes.

Q. Do you know where James Stokes lives?

A. I don't know where his house is at.

Q. Well, does he live in Wilkinson County or Adams County?

A. He lives in Adams County.

Q. He lives in Adams County, all right, now, James Stokes was present, who else was present?
A. Them two mens over there.
Q. You are pointing to these two men over here?
A. Across the table over there.
Q. Attorney George F. West, Jr.?
A. That's right.
Q. And Cecil Gill Smith, Jr.?
A. I don't know his name, but that's the man.
Q. You are positive about these gentlemen being there?
A. Yes, sir, and yourself.
Q. And I was there, and I did the questioning, I believe, if you recall, you remember that?
A. Yes, sir.

BY MR. MULLINS:

I ask that that be marked for identification.

(Statement marked, Defendant's Exhibit 1 for Identification to testimony of Gable McDonald, out of presence of Jury.)

* * * *

[fol. 211]

DIRECT EXAMINATION

BY MR. MULLINS:

Q. What is your name, please?
A. Gable McDonald.

* * * *

[fol. 212] Q. Now, Gable, this paper or this subpoenae says that you were to be in Court on the 26th of October 1970 at nine o'clock a.m. in cause number 1647, which is the case that we are talking about here today to give evidence and further to bring with you and produce on the trial of this cause all twenty-two caliber pistols purchased and owned by you between June the first 1968 and [fol. 213] June the 14th, 1969, and one thirty-eight caliber Colt special which you took from the automobile of James Williams on the night of June the 14th, 1969, dur-

ing the time that Leon Chambers was being transported from Woodville, Mississippi, to the hospital at Centerville, Mississippi. Now, will you tell the Court and Jury whether or not you purchased and owned any twenty-two caliber pistols between June the first 1968 and June the 14th, 1969?

A. Well, I don't know now what month I bought the pistol in. I can't read and I can't write and if I go buy something I don't know what month and I don't know what date or nothing like that. When I bought the pistol I can't tell what date or nothing like that because I can't read and write. All I know, I bought it and I don't know how long it's been since I bought it.

Q. Do you have any idea how long it has been since you—how many did you buy?

A. I bought two from Gibsons.

Q. Is that Gibsons in Natchez, Mississippi?

A. Yes, sir.

Q. Do you know what year you bought the first one?

A. No, sir, I don't know what year it was.

Q. Do you have any idea how long it was—was it before or after Aaron Liberty was shot?

A. The first one was before.

Q. And do you have any idea or could you give us your best estimate as to how long it was before Aaron Liberty was shot that you purchased the first pistol?

A. It was somewhere around a year or better than a year, or something about like that.

Q. Around a year or maybe a little more, is that [fol. 214] your testimony?

A. Yes, sir.

Q. Now, did you bring that pistol with you?

A. No, sir, that pistol got tooken from my car down at Line, Louisiana.

Q. Down where?

A. Down at Line, Louisiana.

Q. Are you saying Atlanta?

A. No, Line.

Q. Oh, Line, pardon me, Line, Louisiana?

A. Yes, sir.

Q. And how long ago was it that that pistol was taken from your car?

A. I don't know, sir, I can't tell you exactly how long ago it was when it got took.

Q. Now, when did you purchase the second pistol, was that before or after Aaron Liberty was shot?

A. That second one was after.

Q. It was after he was after he was shot?

A. Yes, sir.

Q. Now, how long after he was shot?

A. Well, I don't know, sir. I don't know how long it was after he was shot when I got that one.

Q. You don't know?

A. No, sir, I don't know the day I bought it and I don't know the month I bought it.

Q. And where did you buy it?

A. I bought it at Gibsons.

Q. And is that Gibsons in Natchez?

A. Yes, sir.

[fol. 215] Q. And do I understand you to say that you bought both of them at Gibsons?

A. Yes, sir, I bought both of them there.

Q. Now, the second one was purchased after Officer Liberty was shot?

A. Yes, sir.

Q. And did I understand you to say you didn't know how long it was after?

A. No, sir, I don't know how long it was after.

Q. Well, now, your first pistol, what kind was it?

A. I don't know, sir. All I know is twenty-two.

Q. It was a twenty-two caliber?

A. All I know is twenty-two pistol. I don't know what it was.

* * * *

[fol. 217] BY MR. MULLINS:

Q. Now, then, the Court also asked you, Gable, to produce a thirty-eight caliber Colt special which you took from the automobile of James Williams on the night of June 14th, 1969, during the time that Leon Chambers was being transported from Woodville, Mississippi to the

hospital at Centerville, Mississippi and the return trip to Woodville, Mississippi? Did you go with James Williams?

A. Yes, sir, I went with him.

[fol. 218] Q. And what was the purpose of that trip, if you will tell us?

A. To carry Leon Chambers to the hospital.

Q. And do you have that thirty-eight caliber pistol?

A. I didn't take nairn from his car.

Q. Did you see such a pistol?

A. I seed two guns. It was a pistol up in the front dashboard and a rifle laying in the back.

Q. Would you tell us what sort of pistol, if you know, that you saw in James Williams' car?

A. Well, I don't know exactly what kind of pistol it was. I know it just had a funny looking handle on it.

Q. When you say a funny looking handle, was it striped, was it speckled or spotted or what?

A. It was kind of striped or something or nother, it had little trenches in it.

Q. It had little trenches in it?

A. Yes, sir.

Q. And were those trenches the same color or were they a different color?

A. Well, I don't know whether it was the same color or not, but I know it was a kind of speckled looking pistol. I don't know whether all of it was the same color or not because I didn't pick the pistol up and look at it.

Q. Now, Gable, do you recall on November the 10th, 1969, that you came to my office in Natchez, Mississippi?

A. I remember when I come to your office, but I don't know what day it was and I don't know what year it was, but I remember coming to your office.

Q. Do you remember what kind of office that was?

[fol. 219] A. I reckon it was a lawyer office.

Q. And do you know where that office was located?

A. No, sir, I don't know what street that office was on.

Q. Do you know what town it was located in?

A. It's in Natchez.

Q. Is that Natchez, Mississippi?
A. Yes, sir.
Q. Now, who was present, Gable, when you came to my office in Natchez, Mississippi?
A. It was West there and that lawyer.
Q. You are speaking of George West, Jr.?
A. That's right.
Q. Am I correct now, you are sure of that?
A. That's right.
Q. And this gentlemen here?
A. That's right.
Q. Mr. Cecil Gill Smith, Jr.?
A. I don't know what his name is.
Q. Are you positive that he was present that day?
A. Yes, sir.
Q. Now, Gable, who else, if anyone?
A. James Stokes and yourself.
Q. Now, where does James Stokes live?
A. In Natchez.
Q. And you say that I was present?
A. Yes, sir.
Q. Do you recall what we did there that day?
A. You asked some questions.
Q. And where were we when I asked those questions?
[fol. 220] A. In a office.
Q. In what part of the office, do you recall?
A. I don't know what part it was. I reckon it was your office. I don't know. You was in it.
Q. And who asked the questions that day?
A. You did.
Q. And will you state whether these other gentlemen that you have named were present at the time that those questions were asked?
A. Yes, sir, they was present.
Q. And who else besides the—if there was anyone present besides the gentlemen that you have named, will you tell us who that was?
A. It was a lady there. I don't know who was the lady.
Q. What was she doing, would you tell us that?
A. Yes, sir, she was writing.

Q. And writing like this lady here?

A. Yes, sir.

Q. Then, after that, Gable, will you tell us what happened, if anything?

A. What happened?

Q. Yes, did you leave or did we run you off or did you come back or just tell us in your own words what happened after that?

A. After you asked the questions?

Q. After I asked the questions, yes, please?

A. Well, I left. James Stokes took me back to his station and later on he come after me and got me and brought me back there for to sign some papers and I [fol. 221] made a X on some papers.

Q. You made your X on some papers?

A. Yes, sir.

Q. Now, who was present at the time you made your X on some papers, if you will tell us?

A. Those same mens was present.

Q. The same men were present?

A. Yes, sir.

Q. Will you state whether those questions and answers were read to you?

A. Yes, sir.

Q. The questions and answers were read to you at that time?

A. Yes, sir.

Q. Now, was that before or after you put your X on those papers?

A. That was after I put my X on the papers.

Q. You mean you signed it after they had read it to you or before?

A. I made the X on the papers. I had went and come back to sign the papers when they was read to me.

Q. They were read to you and you put your X on them, is that right?

A. Yes, sir.

Q. And were these same gentlemen still present at that time?

A. Yes, sir, all them mens, yes, sir.

Q. The same men were present?

A. Yes, sir.

Q. Now, Gable, I hand you Defendant's Exhibit One [fol. 222] for identification to your testimony, and ask you to examine this piece of paper and tell us whether or not those are the questions and answers or if they appear to be the same questions and answers and whether or not your X or the signature, your usual signature appears on that paper? Will you take your time and take a look at it?

A. I told you I couldn't read.

Q. Well, would you look at the paper and tell us whether or not your X appears on that?

A. I don't see no X on them.

Q. I believe if you will turn over to the back page, Gable, I believe at the end of the paper is where the writing is. Now, if you will take a look at that writing, do you see where it says Gable McDonald, his X?

A. I see a X in there, but now I don't know whether that's my X or not. I know I made a X on some papers in your office, but I don't know whether that's it or not.

Q. You made an X on some papers in my office?

A. Yes, sir.

Q. But you couldn't swear whether this is your X or not, is that your testimony?

A. I don't know whether that's it.

BY MR. MULLINS:

I believe that's all from this witness at this time, if the Court please.

BY MR. FORMAN:

Your Honor, there is going to be considerable cross examination.

BY THE COURT:

All right, we will recess for lunch at this time.

* * * *

[fol. 223]

DIRECT EXAMINATION

BY MR. MULLINS:

Q. Will you state your name, please, sir?
A. Cecil Gill Smith, Jr.

* * * *

[fol. 227] Q. Mr. Smith, I hand you Defendant's Exhibit One for identification to the testimony of Gable McDonald and ask you to examine that, please, sir?

A. Yes, sir, this is a signed carbon copy of the statement of McDonald which was transcribed in our office.

Q. Now how, if you will tell us, please, sir, do you know that that was signed by Gable McDonald?

A. Well, I, of course, recognize my own handwriting. As I told you, I separated the X by writing Gable to the left of the X and McDonald behind it, and then above his X I put his and below his typed name, I put his mark.

Q. Will you state whether or not you saw him make his mark on that piece of paper?

A. Yes, sir, I saw him.

Q. And will you state whether or not that paper had been read to Gable McDonald?

A. Yes, sir, George West read it to him.

Q. Now, will you tell us, please, sir, who witnessed that mark of Gable McDonald?

A. It was witnesses by Clyde W. Mullins, George F. West, Jr., and Cecil Gill Smith, Jr., whose signatures are on the last page of this statement.

* * * *

DEFENDANTS EX. 1 TO TESTIMONY OF CECIL GILL SMITH, JR. AND GABLE MCDONALD

[Defendants Ex. 1 to Testimony of Gable McDonald (Out of Presence of Jury)]

[Defendants Ex. 1 for Identification to Testimony of Gable McDonald (Out of Presence of Jury)]

By: Mr. James Stokes
105 Florida Drive
Natchez, Mississippi

I would like to say that I have instructed this gentleman to tell you what he wanted to tell you, the truth, the whole truth, and nothing but the truth in its entirety.

By Mr. Clyde W. Mullins

Q. And who is this gentleman?
A. Gable McDonald.
Q. What is your address?

By Gable McDonald

A. Six miles this side of Woodville on Highway 61. Route 1, Box 800-B, Woodville, Mississippi.
Q. How long have you lived there?
A. Two years.
Q. Where did you live before you moved there?
A. A place called Rose Hill.
Q. Is that in Wilkinson County?
A. Yes.
Q. What is your occupation?
A. I do different things. Work at a saw-mill.
Q. Are you now employed?
A. Yes, Franklin, Louisiana, Sugar Mill.
Q. What is the name of the Sugar Mill?
A. Southcoast Corporation.
Q. You heard Mr. Stokes that he had told you to tell the truth, and nothing but the truth. You realize that you are not under arrest, that you are not detained in any way by us or anyone else.
A. Yes sir.

Q. Did you come voluntarily?
A. Yes.
Q. Nobody compelled you to come?
A. No.
Q. Tell us briefly in your own words why you came to see us today.
A. Well, Rev. Stokes wanted me to come in to answer some questions.
Q. But he didn't compel you?
A. No, he didn't compel me.
Q. Have you been interviewed by or talked to any law enforcement officers?
A. No.
Q. I want to make it clear to you that you are not compelled to tell us anything; do you understand that?
A. Yes sir.
Q. Now where were you on June 14, 1969?
A. I was in Woodville.
Q. What time of day, if you recall, did you get to Woodville?
A. I can't tell you the exact time.
Q. Was it morning or afternoon?
A. It was afternoon because I worked until noon.
Q. Where were you working then?
A. Crosby Lumber.
Q. Did you go to town by yourself or with anyone.
A. By myself.
Q. Did you go in your own automobile?
A. No, I walked part of the way and a white man picked me up.
Q. In other words, you hitch hiked?
A. Yes sir.
Q. What day of the week was this?
A. Saturday.
Q. That day there had been some disturbances close to Jack's Coffee Shop in Hayes Cafe. Were you at or near by any of these places?
A. I was right across the street from Hayes Cafe.
Q. What did you see?
A. Well I don't know exactly how it started. When I come up the law was running around different cafes.

Q. Did you know what law it was?

A. It was Liberty—Sonny Liberty I think. I don't know the white man's name.

Q. What was he doing when you first saw him?

A. He was going in every cafe. The boy.

Q. And who do you mean by the boy?

A. C. C. came in the cafe.

Q. What did they do?

A. They picked the boy up. He didn't want to be arrested. They were handling him pretty rough. I walked across the street. They called for two more policemen. Geter and the other deputy.

Q. Had you known Mr. Geter before that day?

A. Yes, for several years.

Q. Does he life out near where you did?

A. He used to did but he has moved to town.

Q. What happened then?

A. They were handling the boy so rough we went to assist. The other two policemen came. This Liberty boy broke out of the crowd and went to his car and came back with a sawed off shot gun.

Q. What did he do then?

A. The shot gun fired twice.

Q. Was that before he was shot or after?

A. He fired once before he was shot.

Q. Which way did he fire before he was shot?

A. He fired to the side. He came back to the crowd.

Q. Which was was he coming? Was he coming back toward Main Street?

A. Yes.

Q. Was anyone else in the immediate vicinity that you recognized?

A. It was so thick.

Q. Who shot officer Liberty?

A. I did.

Q. What type of gun did you use?

A. A 22 caliber.

Q. Who did it belong to?

A. Me.

Q. Did you carry it to town?

A. Yes.
Q. Where is the gun now?
A. I couldn't tell you.
Q. Did you carry it away from there or did you leave it there?
A. I carried it away from there and I gave it to one of the spokesmen.
Q. Would there be any way that we could find the gun?
A. I ask what happened to the gun later and he said he didn't know what happened to it.
Q. How many times did you fire the gun?
A. I think about 5 or 6.
Q. How many cartridges it hold?
A. 9.
Q. Was it a revolver?
A. Yes.
Q. Do you remember what kind of revolver?
A. What do you mean?
Q. Such as a Smith and Wesson, the name.
A. A 22 caliber—that is all I remember.
Q. How long had you had the gun?
A. I couldn't tell you but a pretty good while.
Q. A year or more?
A. Something like that.
Q. Did anyone that you know of see you fire the gun that day?
A. No.
Q. Where were you when you fired the gun?
A. I was on the sidewalk by a tree.
Q. Were you in the alley by Jack's Coffee Shop?
A. The first shot was fired above my head and knocked some limbs on my head. It was after this shot when I fired my pistol.
Q. Where was Officer Liberty?
A. Right in front of me.
Q. Where did the shot strike his body?
A. I imagine it did, he flinched.
Q. Did you see Leon Chambers?
A. After everything was over.

Q. Where was he?

A. I made the block and when I came back they were putting him in James Williams car. I got into the car with them and carried him to Centreville Hospital.

Q. Did you see Mr. Geter at that time?

A. He was there but I think he went on through the crowd.

Q. On back toward the other side of the street?

A. On above Main Street.

Q. I believe that you told me you hadn't talked to any law enforcement officers?

A. No, I haven't.

Q. When did you decide to tell someone about this matter?

A. Well, one I know knowed it all time.

Q. Who was that?

A. James Williams.

Q. Did you make the decision that you wanted to tell about this situation and get it off of your mind?

A. Well, I was sent for off of my job and answered some questions.

By Mr. George F. West, Jr.

Q. Did you see Mr. Geter before Mr. Liberty was shot?

A. I saw him before he was gone on through—When he was getting shot I didn't see Mr. Geter. I could not see him.

By Mr. Mullins

Q. Are you willing to testify in Court if you are called upon to do so?

A. No, not unless I had to.

Q. But if you were called upon to do so would you tell the truth?

A. I don't know, it is pretty rough in some things.

Do you have any questions Mr. Stokes?

A. The only thing that I would like to indicate that the reason I had ask him to tell the truth, the only truth, and nothing but the truth is because I wanted him to feel that he is willing to tell the truth here or would anywhere.

By Gable McDonald

A. I would.

Those present for this statement were Mr. James Stokes, Mr. George F. West, Jr., Mr. Cecil Gill Smith, Jr. and Mr. Clyde W. Mullins.

His
GABLE X MCDONALD

GABLE MCDONALD
Mark

Witnesses to mark
of Gable McDonald

/s/ CLYDE W. MULLINS
/s/ GEORGE F. WEST, JR.
/s/ CECIL GILL SMITH, JR.

Sworn to and subscribed before me, this the 10th day of November, 1969.

/s/ BETTY C. POWERS
NEE BETTY COTTEN
Notary Public

My Commission Expires:

April 1, 1972

• • • •

[fol. 228] BY MR. MULLINS:

If the Court please, we offer at this time Defendant's Exhibit One for Identification into evidence as an exhibit to the testimony of Gable McDonald and and Mr. Cecil Gill Smith, Jr.

BY THE COURT:

All right, sir. Let it be marked.

* * * *

[fol. 230] BY MR. MULLINS:

If the Court please, since this has been introduced and accepted into evidence, I request that I be permitted to read it to the Jury at this time.

BY THE COURT:

All right, sir.

BY MR. MULLINS:

Ladies and Gentlemen, I will read you this statement that has been placed in evidence here. * * *

* * * *

[fol. 238] BY MR. MULLINS:

We tender Gable McDonald to you for cross examination.

CROSS EXAMINATION

BY MR. FORMAN:

Q. Now, Gable, you testified in response to questions asked you by this gentleman here Mr. Mullins. I want to cross examine you about those questions and about this statement that you signed. When were you first contacted and how were you contacted about making any such statement as this that you have testified about?

A. Samuel Hardin told my wife to write me, I was down on camp in Franklin, Louisiana, and Samuel Hardin told my wife to write me and tell me that Stokes wanted to see me.

Q. Stokes wanted to see you?
A. Yes, sir.
Q. All right, in response to that, did you get that [fol. 239] letter from your wife?
A. Yes, sir, I got it.
Q. What did you do when you got that letter?
A. I got it and I got a boy to read it to me.
Q. You got a boy to read it to you?
A. Yes, sir.
Q. You couldn't read the letter?
A. No, sir.
Q. But the letter was read to you in Louisiana where you got it?
A. Yes, sir.
Q. And in the letter it told you what to do?
A. Yes, sir.
Q. That your wife wanted to see you?
A. Yes, sir.
Q. All right, what did you do in response to that, Gable, did you go back home?
A. Yes, sir, I come home. I made it home that Friday night.
Q. What time of the week, if you recall, was it that you got the letter?
A. I don't know whether it was Wednesday or Thursday.
Q. I see, but you come in home Friday night?
A. Yes, sir.
Q. All right, then what did you do when you got home?
A. I come on home and I went to bed and I got up the next morning, which was Saturday morning and went up there to the station to see Stokes.
Q. Now, you say that Stokes wanted to see you?
[fol. 240] A. Yes, sir.
Q. How did you come to know Stokes?
A. Well, when I first come to know Stokes, he was over the Deacons for Defense.
Q. Over the what?
A. The Deacons for Defense.
Q. Deacons for Defense?

A. Yes, sir.
Q. You say he was over them?
A. Yes, sir.

BY MR. MULLINS:

If the Court please, I don't want to interrupt too much, but I want to register this objection to anything that Stokes did or said to this man unless it is shown that Stokes was acting for and on behalf of this Defendant who is charged with this crime.

BY THE COURT:

Overruled.

BY MR. FORMAN:

Q. Now, were you a member of the Deacons of Defense?
A. Yes, sir, I had been.
Q. You had been and this man, James Stokes, was over your organization?
A. Yes, sir.
Q. Now, where did Stokes live?
A. In Natchez.
Q. Is he white or black?
A. He is black.
Q. Now, how long then had you known this man, James Stokes?
[fol. 241] A. I just met him on that time I was in that.
Q. The Deacons for Defense?
A. Yes, sir.
Q. That's when you met him?
A. Yes, sir.
Q. How many times did you attend those meetings which he was in charge of?
A. About three or four times.

BY MR. MULLINS:

If the Court please, we want to register this objection also for the record to show that we object to anything

relating to the Deacons of Defense unless that is shown to have some connection with Leon Chambers.

BY THE COURT:

Overruled. I don't want to go into that too strongly, but as far as membership is concerned, all right.

BY MR. FORMAN:

Q. Now, he being then the head of the Deacons had sent for you, is that right?

A. Yes, sir.

Q. And for you to come to his place in Natchez?

A. Yes, sir.

Q. And you got home Friday night, went to bed you said, and got up the next morning, where did you go from Woodville then, from your home?

A. I went from my home to his filling station.

Q. To whose station?

A. Stokes' station.

Q. Stokes' station, and where was that station located?

[fol. 242] A. In Natchez.

Q. In Natchez. Now, how did you get up to Natchez that morning, Gable?

A. I went from my house up as far as the Jefferson-Davis Hospital with Samuel Hardin.

Q. Now, is that the man you said had told your wife to write you to come home?

A. Yes, sir.

Q. All right, and did you get out of the car at the Jeff-Davis Hospital?

A. I got out of the car at the Jeff-Davis Hospital and I walked up there to the by-pass where the man's office is at where they buy that paper wood and I flagged a cab from there on up town.

Q. On up town?

A. Yes, sir.

Q. Now, where did you go and where abouts in town did you get out of the cab, if you know?

A. We leave here and the street goes straight through and it's a fire house sitting on the side of the street and I got off at the next block.

Q. How far were you from Stokes' station that we are talking about?

A. About two blocks.

Q. Did you go from there to that station?

A. Walked, yes, sir.

Q. Walked there?

A. Yes, sir.

Q. Was James Stokes at that station when you got there?

[fol. 243] A. Yes, sir, he was there.

Q. Now, tell this Jury, Gable, when was the last time you saw James Stokes, if you remember, before this time? How long had it been since you had seen him before then?

A. Before that Saturday?

Q. Yes.

A. I don't know, sir, it had been a long time.

Q. A long time. All right, now, when you got to the station who was there with him at this station?

A. It was two boys working around the station.

Q. All right, whose station was that?

A. Stokes. I imagine it was Stokes' station.

Q. Stokes' station, is it a filling station?

A. Yes, sir, it's a filling station.

Q. Where they sell gas and oil?

A. Sell gas and oil and wash cars.

Q. Had you ever traded at that station before?

A. Yes, sir, I had got gas there from them.

Q. You got it from Stokes?

A. Yes, sir.

Q. So you had traded with Stokes?

A. Yes, sir.

Q. Pretty often at that station?

A. Well, no, sir, two or three times I had got gas there.

Q. All right, now, he had two boys, you say, working there with him?

A. Yes, sir.

Q. What did you and he do when you showed up at the station on that Saturday morning?

[fol. 244] A. Well, I think he was cleaning out a car when I got there. He told me to wait just a few minutes until he got through with that car. When he got through with that car me and him walked around to a little old room there by the wash rack, grease rack, a little old room side the station there.

Q. Just you two went in there?

A. Yes, sir.

Q. Was there anybody else in that room?

A. No, sir.

Q. Did he close the door behind you all?

A. Yes, sir.

Q. All right, Nobody could see or hear you all in there?

A. No, sir.

Q. Just you two?

A. Yes, sir.

Q. All right, tell this Jury what he said to you when he was in there?

A. He asked me to own that I killed Sonny Liberty. I told him that I couldn't do that, that they would send me to the pen. He said, no they won't, wasn't no law or nothing going to know nothing about it, they just wanted the statement.

Q. They just wanted the statement?

A. They just wanted the statement.

Q. Now, Gable, let me ask you this, you said that he wanted you to own what?

A. That I killed Sonny Liberty.

Q. That you killed Son Liberty?

A. Yes, sir.

Q. He wanted you to own to it, did you understand [fol. 245] what he meant by that?

A. That I did the killing.

Q. That you did the killing?

A. Yes, sir.

Q. All right, what did you tell him in response to that?

A. I told him that I couldn't do that. They would send me to the pen for doing that. He said no, he said, won't nobody know nothing about that, they just wanted the statement.

Q. They just wanted the statement?
A. Yes, sir.
Q. Did he say who they were?
A. He didn't say who they was, he said, they just wanted the statement.
Q. All right, what else did he say to you then, Gable?
A. Well, he told me he was going to sue the town for so many thousand dollars.
Q. Sue what town?
A. Woodville Town.
Q. Woodville Town?
A. Yes, sir, for so many thousand dollars. I disremember now how many thousand dollars it was.
Q. Was that in payment for you to say you killed Liberty?
A. Yes, sir, he said it would be divided betwixt three of us.
Q. It would be divided between three of you?
A. Yes, sir.
Q. Who was it?
[fol. 246] A. Me and Leon Chambers and James Williams.
Q. You and Leon Chambers, this Defendant, and James Williams, who was a Defendant in this case?
A. Yes, sir.
Q. You three would get the money that they would get out of the suing of the Town of Woodville?
A. Yes, sir.
Q. And that was the money that they were going to pay you to make this statement that you made?
A. Yes, sir.
Q. All right, now, Gable, who told you what to say in making this statement?
A. James Stokes.
Q. James Stokes told you?
A. Yes, sir.
Q. Did he have any kind of a pad there with him when he was talking to you?
A. He had a long tablet just about like one of them that she has.
Q. Like the one she is writing on?

A. Yes, sir.

Q. Well, was any writing on that tablet that you could tell?

A. It was some writing on it.

Q. Some writing on it?

A. Yes, sir.

Q. Now, tell us just what he did say for you to say, if you recall?

A. Well, I can't remember just everything that long, but he told me when they asked where I was that night, [fol. 247] he told me to say I was in town right across the street, that I didn't know how it happened, but when they went to arrest the boy they was handling him so rough that I walked across the street to assist and that Liberty broke to his car after his shotgun and I was standing on the sidewalk.

Q. Now, this is what Stokes is telling you to say?

A. Yes, sir.

Q. All right.

A. I was standing on the sidewalk and there was a shot that went over my head up in the tree.

Q. He made a shot over your head?

A. Yes, sir, and I got all to pieces and started to shooting.

Q. That's what he told you to say?

A. Yes, sir.

Q. That you went all to pieces and went to shooting?

A. Yes, sir.

Q. Well, who did he say for you to say that you shot?

A. Son Liberty.

Q. Son Liberty. Now, how many times did he go over with you that statement before you left there that morning? How long did he keep you there?

A. It was a pretty good while both days.

Q. Both days?

A. Yes, sir.

Q. All right, after he talked to you and told you what to say, then what did he do?

A. He called West.

Q. West?

[fol. 248] A. Yes, sir.
Q. Is that that lawyer sitting over there?
A. Yes, sir, Lawyer West.
Q. Lawyer West, all right, what happened? Did West show up?
A. That Monday or the Saturday?
Q. We are talking about Saturday morning now. All this you told me happened Saturday morning—

BY MR. WEST:

Now, if the Court pleases, let the witness testify.

BY MR. FORMAN:

You just wait a minute.

BY MR. WEST:

No, you let the Judge rule.

BY THE COURT:

Overruled. Don't crowd him, now, let him finish his answer.

BY MR. FORMAN:

Q. This was Saturday morning, the statement that you were telling us that he told you to say?
A. He called West.
Q. He called West?
A. And West come to the station.
Q. And that's this man sitting over here?
A. That's that man sitting right over there, and he come to the station.
Q. All right, what happened when he got there?
A. He told me—him and Stokes walked over there and then he come and told me to go home and come back Monday. He said he got to have a secretary to write down what I say.
[fol. 249] Q. Got to have a secretary to write down what you say and Saturday apparently they had none?
A. Yes, sir, they didn't have none.
Q. All right, what did you do then?
A. I left and went on back up town.

Q. Did you go back home?
A. Yes, sir, late that evening.
Q. All right, when did you come back then the next time to Natchez?
A. That morning.
Q. That Monday morning?
A. Yes, sir.
Q. All right, how did you come to Natchez that time?
A. I come to Natchez that time with my brother-in-law Oscar Tillery.
Q. Oscar Tillery?
A. Yes, sir.
Q. All right, where abouts in town did you come to that day?
A. I got off at that same corner. My brother-in-law had a wreck that Saturday or Sunday and he was taking his car to the Oldsmobile place to have it checked.
Q. All right, from there where did you go then?
A. I went on back over to Stokes' station.
Q. Stokes' station?
A. Yes, sir.
Q. All right, what time was it that you got to Stokes' station on that occasion?
A. Well, I don't know exactly what time it was, but [fol. 250] it was kind of early that morning.
Q. Well, who was at the service station when you got there that time?
A. Stokes was there.
Q. Stokes was there?
A. Yes, sir.
Q. Was anybody else, those boys still working there?
A. The boys wasn't there then but one come after I got there.
Q. After you got there one showed up?
A. Yes, sir.
Q. All right, I'll ask you did James Stokes go over with you again what you were supposed to say?
A. Yes, sir.
Q. He told you again what to make in this statement?
A. Yes, sir.

Q. And was that to the effect that you were going to say that you killed Son Liberty?

A. Yes, sir.

Q. Now, after he went over that with you again, were you all still in this little room you were talking about?

A. Yes, sir.

Q. Where nobody could see or hear you?

A. Yes, sir.

Q. All right, what happened after then?

A. Well, he had already called West, but West hadn't made it.

Q. That's the same—

A. That's the same man.

Q. All right.

[fol. 251] A. And us got in the car and left on the street going down by the station and we met him walking coming toward the station and we stopped and picked him up and went on over to this man's office.

Q. Went over to this man's office sitting here that's been questioning you?

A. Yes, sir.

Q. All right, now, when West got in the car with you all, did he make any statement to you, or did he say anything to you?

A. No, sir, he ain't said nothing.

Q. He didn't say anything, and from there then they went to, you say, Mr. Mullins' office there?

A. Yes, sir.

Q. Now, Gable, when you got to that office tell us what happened then when you went in there?

A. Well, I sat out there in the hall in some seats out in the hall for a while and West and Stokes went in the office there and finally after a while they come back and got me and carried me in the office and when I got in there them two mens was there sitting in the office.

Q. All right, now, when you went in they set you down in the front part of the office?

A. Yes, sir.

Q. And you said West and Stokes went into another office?

A. No, sir, when I went in the office all of them stayed in the office. They went in the office before I went in the office.

Q. They left you there and they went into the office [fol. 252] first?

A. Yes, sir.

Q. And how long were they in there before they come back and got you?

A. Well, they wasn't in there too long, but it was a pretty good while too.

Q. A pretty good while too before they come back and got you?

A. Yes, sir.

Q. Then when you went in and you say Mr. Mullins and Mr. Smith and Mr. West and James Stokes were all in there?

A. Yes, sir.

Q. Well, was there anybody else in there?

A. The secretary wasn't in there then, but she come in there directly after that.

Q. All right, well, when you first went in there, Gable, did anybody in that office ask you any questions?

A. They didn't ask me nothing until the secretary come in.

Q. All right, then who then started asking the questions?

A. That man sitting right there.

Q. Mr. Mullins?

A. Yes, sir.

Q. Now, Gable, can you read anything, how much education have you had?

A. None, I ain't got none. I can't read a bit.

Q. You've never been to school in your life?

A. I been there a few times, but that's all. I never did learn nothing.

[fol. 253] Q. You can't read your name and you can't write your name?

A. No, sir.

Q. And the only way that you can ever sign anything is with an X, isn't it?

A. Yes, sir.

Q. Now, they asked you questions in here, they asked you for instance, what was the name of the sugar mill, and what did you answer them there, can you possibly tell me what you said?

A. No, sir, I can't tell nothing on writing.

Q. You can't read anything, you say?

A. No, sir.

Q. They asked you about the gun and you said you gave it to the spokesman. Would you know the word spokesman if you saw it?

A. No, sir.

Q. How long did they question you there, Gable?

A. I don't know, sir, exactly, but it wasn't too long.

Q. Now, I'll ask you again now, what was the promise to you if you would admit that you killed Liberty, that they would do for you?

A. He said they would sue the town for so many thousand dollars, I disremember now how many thousand dollars it was, they would sue the town for so many thousand dollars and it would be divided betwixt us three.

Q. Now, is James Stokes a preacher, if you know?

A. No, sir.

Q. He is not a preacher?

A. He is not a preacher.

[fol. 254] Q. Now, Gable, when you told them that you couldn't do it, you couldn't admit that because they would put you in the penitentiary, what was it they told you?

A. They said wouldn't nobody know nothing about it, wouldn't no law or nothing know nothing about it. They just wanted the statement, I could go on back to work that Monday evening.

BY MR. MULLINS:

Now, if the Court please, the District Attorney has said what they promised him, I don't believe he testified about what they promised him.

BY THE COURT:

Sustained.

BY MR. FORMAN:

I am sorry if I said that, I didn't intend to say that. What did James Stokes promise you and you have told us what that was. Let me ask you this, did they promise you that you wouldn't go to jail?

BY MR. SMITH:

That's the same thing, Judge, there's no they to it.

BY THE COURT:

Sustained

BY MR. FORMAN:

Q. Well, Stokes then?

A. That the law wouldn't know nothing about it, that they just wanted the statement, that I would be gone back to work that Monday evening.

Q. Well, after you then made this statement did you sign it then?

A. No, sir, Stokes carried me back to his station.

[fol. 255] Q. Stokes carried you back to his station?

A. Yes, sir.

Q. What did he do with you while he had you around at the station?

A. He left me there and he left.

Q. And he left?

A. Yes, sir.

Q. All right, how long did you stay at that station then?

A. I don't know exactly, I stayed for a hour or so.

Q. An hour or so, then what happened?

A. He come back and got me then and took me back around to his office.

Q. Took you down to Mr. Mullins' office?

A. Yes, sir.

Q. Now, you are talking about James Stokes did that?

A. Yes, sir.

Q. All right, what transpired when you got back, was anybody else with you two then when you went back to the office that time?

A. It wasn't nobody but me and him went back to the office.

Q. All right, what happened when you got back to the office on that occasion?

A. Well, that's the time they wanted me to sign that.

Q. They wanted you to sign this—

A. Statement, yes, sir.

Q. All right, now just tell us exactly what took place there?

[fol. 256] A. Well, I signed the statement.

Q. You signed it?

A. Yes, sir.

Q. And how did you sign it?

A. With a X.

Q. With an X?

A. Yes, sir.

Q. Now, did they ever read that statement over to you?

A. Yes, sir, they read it.

Q. They read it to you and when you signed it you just took it that all you could do was just sign the paper, you couldn't read a word that they said you said there?

A. No, sir, I just signed the bottom of the paper.

Q. You signed the bottom of the paper with your X?

A. Yes, sir.

Q. All right, did you see anybody else sign it after you put that X on it?

A. Well, I disremember now who signed it but somebody else signed the paper, but I disremember now who signed that paper.

Q. Was that secretary present in there then when you signed it at that time?

A. No, sir, because it wasn't in the same office I was in.

Q. You didn't see her then when you signed with this X?

A. No, sir.

Q. The only time you saw her was back when you made that statement?

[fol. 257] A. Yes, sir.

Q. Now, Gable, what happened after you signed that statement?

A. After I signed that statement Stokes took me back down to his station and he went somewhere. I don't know where he went, but he stayed a long time then, and then he come back and this time he told me that I had to go to jail.

Q. You had to go to jail?

A. Yes, sir.

Q. Now, up to that time do I understand that he had promised you that you would not have to go to jail?

A. That I wouldn't go to jail, wouldn't no law or nothing know nothing about it, they just wanted the statement.

Q. He told you then when he come back that time that you had to go to jail?

A. That I had to go to jail.

Q. What did you say to him when he told you that?

A. I didn't say nothing. I didn't know what to say because I didn't know I had to go to jail.

Q. Well, what did they do with you then?

A. They carried me on down there to the jail.

BY MR. WEST:

Now, if the Court pleases, again he said what did they do with you and I don't think the witness has said that they did anything.

BY THE COURT:

Sustained.

BY MR. FORMAN:

Q. What did Stokes do with you then when he told you that you had to go to jail?

[fol. 258] A. He came down there to the station and Lawyer West was with him when we went down to the jail, and Lawyer West told me, he said, now don't worry, us going to get you out, that's what he told me, in a couple of days we going to come get you out.

Q. Who told you that?

A. Lawyer West said that.

Q. Told you in a couple of days, not to worry, they would get you out?

A. Yes, sir.

Q. Did they tell you anything about what to say to the officers if they questioned you?

A. Stokes told me don't say nothing to no officers or nothing unless West be there.

Q. Don't say nothing?

A. To no person or nothing unless Lawyer West be there.

Q. Unless West was there?

A. Yes, sir.

Q. All right, now, they took you to the jail, you say?

A. Yes, sir.

Q. And was Mr. McGraw there?

A. He wasn't there then, but they kept me in the jail until he come. Later on he come there.

Q. All right, later on Mr. McGraw—do you know Mr. Burnell McGraw?

A. Yes, sir, I know him.

Q. How long have you known him, Gable?

A. Ever since I was a little old boy.

[fol. 259] Q. You've been knowing him all your life?

A. Yes, sir.

Q. All right, he come to the jail then where they had you there in the jail?

A. Yes, sir.

Q. All right, did I show up there on that occasion too, did you see me there that day?

A. No, sir, I didn't see you there that Monday evening.

Q. You didn't see me there that Monday evening?

A. No, sir.

Q. Did Mr. McGraw, the Sheriff, did he try to talk to you that Monday evening?

A. No, sir, he didn't say much to me that Monday evening, but he come back the next day.

Q. At that time I came in with him, that was on Tuesday?

A. Yes, sir.

Q. Now, at that time, Gable, you still wouldn't tell us anything, would you?

A. No, sir.

Q. And you refused to say anything to us about this matter?

A. Yes, sir.

Q. And I got up and left whenever you told him you wasn't going to tell him anything?

A. Yes, sir.

Q. And left you with the Sheriff?

A. Yes, sir.

Q. Now, he put you back in jail there in Natchez, [fol. 260] didn't he?

A. Yes, sir.

Q. And the next person that came, who was it that came?

A. The next person was my daddy that I seen.

Q. Your daddy came?

A. Yes, sir.

Q. And that was when, Gable?

A. I think that was the next day.

Q. The next day?

A. Yes, sir.

Q. All right, were you permitted to talk to your father?

A. Yes, sir, I talked to him.

Q. Did you later then talk to Sheriff McGraw?

A. Yes, sir.

Q. What did your daddy and you talk about?

A. He just told me—

BY MR. SMITH:

If the Court please, this is hearsay, what he and his father talked about.

BY THE COURT:

Sustained.

BY MR. FORMAN:

All right, they don't want you to tell that.

BY MR. MULLINS:

It's not that we don't want him to tell that, but it's not competent for him to tell that, and we ask the Court to rule on it.

[fol. 261] BY THE COURT:

The objection is sustained, the Court won't permit him to tell it.

BY MR. FORMAN:

Q. Now, Gable, I'll ask you this question now, did you yourself shoot and kill Aaron Liberty?

A. No, sir.

Q. You did not?

A. No, sir, I did not.

Q. Who told you to say how many shots were fired there on that occasion?

A. James Stokes told me about.

Q. He said about?

A. Yes, sir.

Q. How many, do you remember?

A. Five or six, something like that.

Q. Something like that. Now, what did he say to you if you were asked about the gun you used to kill this man with?

A. To say I give it to one of the spokesmen.

Q. To say what?

A. I give it to one of the spokesmen.

Q. To one of the spokesmen?

A. Yes, sir.

Q. Now, who was a spokesman, did he tell you who a spokesman was?

A. He said if they asked what spokesman, to tell them Red Cain, but he didn't know what I did with the gun, I just told him to keep the gun until I come back after it.

Q. If they asked you what spokesman—

[fol. 262] A. To tell them Red Cain, and say he didn't know why I give him the gun, I just carried him the gun to keep it until I come back after it.

Q. Just tell them you give it to Red Cain and you would come back after it?

A. Yes, sir, and he didn't know what I had did with it and I told him to just keep the gun until I come back after it.

Q. That's what he told you to say?

A. Yes, sir.

Q. Anybody that asked you about the gun?

A. Yes, sir.

Q. When did he tell you to tell that, if you remember?

A. About the gun?

Q. Yes.

A. He said if any law asked me what spokesman I give it to, to tell them I give it to Red Cain, but Red Cain didn't know what I did with it, I just told him to keep it until I come back after it.

Q. Those are the words that James Stokes told you to tell if anybody asked you about what happened to the gun?

A. Yes, sir.

Q. Now, Gable, I want to ask you this question, were you in Woodville the night that Aaron Liberty was killed?

A. Yes, sir.

Q. What time did you come to town that day?

A. I don't know, sir, exactly, but it was in the evening when I come to town.

Q. In the evening?

[fol. 263] A. Yes, sir.

Q. Well, was it before dark or at dark or—

A. It was before dark.

Q. Before dark. All right, where abouts did you go when you went to Woodville that day, Gable?

A. Down at Gladys' Cafe.

Q. Down at Gladys' Cafe?

A. Yes, sir.

Q. Now, where is Gladys' Cafe located in the Town of Woodville?

A. Down there just about to the jail.

Q. On Main Street?

A. Yes, sir.

Q. Down about where the County Jail is?

A. Just about, over on the other side from where the jail is.

Q. On the opposite side of the street from the jail?

A. Yes, sir.

Q. Now, how long did you stay in that cafe down there that afternoon or that evening?

A. I stayed down there. That's where I was when that racket started.

Q. How did you know about any racket?

A. Because I heard two shots.

Q. You heard two shots?

A. Yes, sir.

Q. From the cafe where you were?

A. It sounded like two shots from a shotgun.

Q. Two shotgun shots?

A. Yes, sir., and some folks was running down the [fol. 264] streets and said they was fighting up there and shooting up there, and so finally after then, shortly after then, me and Burkley Turner got up and walked up there and when us got up there they was putting Leon Chambers in James Williams car.

Q. They were putting Leon Chambers in Williams' car?

A. Yes, sir.

Q. All right.

A. And they got him in the car and James Williams asked somebody to go with him and me and Burkley Turner got in the car and went to Centerville with him.

Q. You and who?

A. Me and Burkley Turner got in James Williams car and went to Centerville with him to carry Leon Chambers to the hospital.

Q. All right, now, then as I understand your testimony, the shooting was all over with before you got up there?

A. Everything was all over with. Wasn't no law or nothing up there when I got up there.

Q. I see. All right, you got in the car with James Williams and they had Leon Chambers in the car and what was the name of the other boy?

A. Burkley Turner.
Q. All right, what part of the car did you sit in?
A. I was sitting in the front.
Q. The front seat?
A. Yes, sir.
Q. What part of the car did they have Leon Chambers in?
[fol. 265] A. He was in the back.
Q. And who was back there with him?
A. Burkley Turner was in the back there with him.
Q. Turner was back there with him?
A. Yes, sir.
Q. Now, Gable, I'll ask you this question, when you got in Williams' car did you see any weapons in that car?
A. Yes, sir.
Q. Where were the weapons that you saw and what kind were they?
A. They had a pistol laying up in the front on the dashboard.
Q. On the dashboard you say?
A. Yes, sir, and the rifle laying in the back.
Q. Rifle laying in the back?
A. Yes, sir.
Q. All right, what kind of pistol, if you know, was that you saw laying up on the dashboard?
A. I don't know exactly what kind of pistol it was but it had a funny looking handle on it. I ain't never seed a handle on a pistol like that before. That's the first pistol I seed with a handle like that.
Q. Gable, I'll ask you, how long did you know James Williams, how long have you known him?
A. Not very long.
Q. Had you ever been in his car or around his car before?
A. Yes, sir.
Q. Where abouts had you been in and around his car?
A. I have been in his car at the meetings and around [fol. 266] town there.
Q. You have been in his car at meetings and around town?

A. Yes, sir.

Q. I'll ask you if you ever saw that gun that you have just described in that car on those occasions?

A. Yes, sir, I have seed that before.

Q. That same gun that was in there, that pistol, now, I am talking about?

A. Yes, sir.

Q. That was up on the dashboard?

A. Yes, sir.

Q. You had seen it in Williams' car on occasions before this shooting happened?

A. I have seed it before.

Q. Was the rifle in the car on occasions before that you know of?

A. I ain't paid no attention to the rifle.

Q. Where would he keep the pistol when you would see it in his car?

A. Well, it would be laying on the dashboard or on the seat.

Q. On the seat or on the dashboard, you have seen it in both places?

A. Yes, sir.

Q. In James Williams' car?

A. Yes, sir.

Q. Before this shooting ever happened?

A. Yes, sir.

Q. And it was the same pistol, you tell this Jury, [fol. 267] that was in that car that night?

A. It was the same pistol.

Q. The same pistol. Now, do you know whether or not it was a twenty-two or a thirty-eight or a forty-four or what?

A. I don't know exactly what it was, but it looked a little big to be a twenty-two.

Q. It looked a little big to be a twenty-two?

A. Yes, sir, but what it was, I don't know what it was.

Q. All right, where was Leon Chambers shot, if you know, where abouts was he hit?

A. I think it was in the head.

Q. How do you know that, was he bleeding in the head?

A. Yes, sir, he was bleeding.

Q. Do you know how many times he had been hit?

A. No, sir.

Q. Did you help them carry him into the hospital?

A. No, sir, I didn't. It was a doctor, I reckon a doctor, he had on doctor clothes, he come out there and helped him in.

Q. Helped him into the hospital?

A. Yes, sir.

Q. All right, after that then where did you go from there, Gable?

A. Well, I come on back home at Woodville.

Q. You come on back to Woodville?

A. Yes, sir.

Q. Who did you come back with?

[fol. 268] A. I come back with James Williams.

Q. With James Williams?

A. Yes, sir.

Q. Was that pistol still in the car?

A. Yes, sir.

Q. And where did you go, where did he put you out, or where did you get out?

A. Us went on down to Red Cain's.

Q. Red Cain's?

A. Yes, sir.

Q. All right, what did you do at Red Cain's?

A. Well, us got out and stayed around there a while and then us left and went on.

Q. What was the purpose in going to Red Cain's, if you know?

A. Just went down there is all I know.

Q. All right, and from there where did you go?

A. Home.

Q. And how did you get home?

A. I went home with Sammy Hardin.

Q. Sammy Hardin?

A. Yes, sir.

Q. Does he live near where you live?

A. Yes, sir, he do now, but he was living on down the highway from me then.

Q. And he took you home that night?

A. Yes, sir.

Q. All right, now, you tell this Jury under your oath, Gable, that you did not shoot Aaron Liberty?

A. No, I did not shoot Aaron Liberty.

[fol. 269] Q. Now, this statement that they took from you and that you signed with an X is not true?

A. No, sir.

Q. Now, after you were placed in jail, they had a preliminary hearing in Woodville, brought you down there for a hearing in this matter, didn't they, Gable?

A. Yes, sir.

Q. Now, in the meantime your father had employed a lawyer for you, hadn't he?

A. Yes, sir.

Q. Mr. Dave Bramlette?

A. Yes, sir.

Q. He represented you at the preliminary hearing, didn't he?

A. Yes, sir.

Q. Now, Gable, do you remember how long it was that you stayed in jail before they carried you down to that preliminary hearing?

A. Far as I know of, it was thirty-nine days.

Q. Thirty-nine days. Now, when they had the preliminary hearing they turned you loose, didn't they?

A. They carried me back to jail and I stayed back in jail I don't know just exactly how many days, but I went back in jail after I left there.

Q. After you left that hearing you went back to the jail and then you were released?

A. Yes, sir.

Q. The Judge at the hearing took this case under advisement at the time that the testimony was given, did he not? I don't know whether you understand what I [fol. 270] am talking about or not.

BY MR. MULLINS:

Now, if the Court please, we object to that.

BY MR. FORMAN:

Q. I am asking him if he knows?

A. No, sir, I don't know.

Q. But you were carried back to the jail in Natchez?

A. Yes, sir.

Q. And how long did you stay there before they turned you loose?

A. I don't know, sir, exactly how many days I stayed there that time, but it was less than a week.

Q. Less than a week, and you were released?

A. Yes, sir.

Q. Now, Gable, you were asked about twenty-two pistols that you owned, Mr. Mullins asked you about one that you bought back in 1968. You said you bought two pistols, as I recall your testimony on direct examination, two twenty-two pistols, is that right?

A. Yes, sir.

Q. And the first one you bought, how long after you bought it was it that I recall you testifying that it was stolen from you?

A. Yes, sir, down at Line, Louisiana.

Q. Down at Line, Louisiana, how long was it after you bought that pistol, would you say it was that it was stolen?

BY MR. MULLINS:

Now, if the Court please, he testified this morning that he didn't know.

[fol. 271] BY THE COURT:

Overruled.

A. I still don't know how long it was. It was three months or longer than three months or less than three months, I just disremember.

BY MR. FORMAN:

Q. I see, now, you said something about how you had that pistol in your car?

A. It was up under the front seat.

Q. Down at Line, Louisiana?

A. Yes, sir.
Q. Was it in anything or just laying under the seat?
A. I had it in a paper bag under that seat.
Q. All right, when did you miss it being under there?
A. I missed it before I left, because when I get out of the car and go back, I always feel under there to see if it was still under there.
Q. And it was not there?
A. No, sir.
Q. Now, I want you to tell this Jury under your oath Gable, did you own a twenty-two pistol at the time of this killing of Aaron Liberty?
A. No, sir, I didn't have no gun at all.
Q. You didn't have no gun at all?
A. No, sir.
Q. Now, this place you are talking about, Line, Louisiana, is right on the line of Mississippi and Louisiana?
A. Yes, sir.
Q. Now, Gable, tell this Jury who the first person was that you told the truth about this thing?

[fol. 272] BY MR. MULLINS:

Now, if the Court please, we object to that about who the first person was he told the truth.

BY THE COURT:

Sustained.

BY MR. FORMAN:

Q. Who was the first person that you denied to that you killed that man that you made this statement to?
A. My daddy.
Q. Your daddy?
A. Yes, sir.
Q. Where was that?
A. In the Natchez jail.
Q. In the Natchez Jail?
A. Yes, sir.

BY MR. FORMAN:

Your Honor, that's all we have right now. We reserve the right to recall him for further cross examination.

BY MR. MULLINS:

If the Court please, we renew our objection to any testimony relative to what Stokes did or said because it has not been shown that Leon Chambers had anything to do with that and that this man was not acting for and on behalf of Leon Chambers.

BY THE COURT:

Overruled.

BY MR. MULLINS:

I want to ask the Court, request that we be permitted —it's very obvious and apparent that this witness is an adverse and unfriendly witness, and in accordance with [fol. 273] our motion that has been previously filed in this Court, we ask that this witness be declared to be an adverse witness, a hostile witness and permit us to propound questions to him as if on cross examination.

BY THE COURT:

He may be hostile, but he is not adverse in the sense of the word, so your request will be overruled.

BY MR. FORMAN:

That's all for the present, Your Honor.

BY MR. MULLINS:

We have no further questions.

(witness excused)

AND THEREUPON, BERKLEY TURNER, having been called as a witness on behalf of the Defense, and having first been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Will you state your name, please?
A. Berkley Turner.
Q. And where do you live?

A. Woodville.

Q. Now, Berkley, speak up, please, so that the Jury can hear you and the Court and the lady taking your testimony down. You live in Woodville, Mississippi?

A. Yes, sir.

[fol. 274] Q. What is your address?

A. Post Office Box eleven fifty-two.

Q. Now, Berkley, were you in Woodville on June the 14th, 1969, when Aaron Liberty was killed?

A. I was.

Q. Prior to, or before the shooting of Liberty did you have an occasion to be in Gladys' Cafe?

A. I did.

Q. How long, approximately, did you stay there?

A. Between thirty and thirty-five minutes, maybe forty-five.

Q. All right, now, Berkley, do you know a man named Gable, McDonald?

A. I do.

Q. At any time while you were in Gladys' Cafe did you see Gable McDonald?

A. No, sir.

Q. What, if anything, were you drinking in Gladys Cafe?

A. I was drinking beer.

Q. Drinking beer?

A. Yes, sir.

Q. And did you drink a beer with McDonald?

A. No, sir.

Q. Your testimony is that you did not see him in Glady's Cafe?

A. I did not.

Q. All right, approximately how long before the shooting, Berkley, was it when you were in Gladys' Cafe?

A. Well, I couldn't tell that. I don't know.

[fol. 275] Q. And after you left the cafe, where did you go?

A. I came back up the street.

Q. All right, back up what street?

A. Up towards Main Street and the rukus started up on the street.

Q. All right, as you came back up Main Street, the rukus had started?

A. Right.

Q. All right, now, did you go down to where the rukus was?

A. I did.

Q. All right, did you see—well, let me ask you, do you know Aaron Liberty, or did you know him?

A. Yes, sir, I knew him.

Q. He was a part time policeman, colored part time policeman, is that right?

A. Yes, sir.

Q. All right, did you see him before he was shot?

A. Yes, sir, I did.

Q. Approximately where were you standing at the time that this man was shot?

A. In front of the coffee shop.

Q. In front of Jack's Coffee Shop?

A. That's right.

Q. All right, and where was Liberty standing with relation to where you were?

A. Well, he was below me.

Q. He was below you?

A. Yes, sir.

Q. And is that further—

[fol. 276] A. South of me.

Q. South of you, all right. Now, what, if anything, did you do after the shooting?

A. What did I do?

Q. Yes.

A. Well, I walked up the street after the shooting, and then I turned around and came back.

Q. All right, did you go anywhere?

A. No, sir.

Q. All right, now, do you know or did you know Leon Chambers before this shooting?

A. Yes, sir, I did.

Q. All right, did you see him that night?

A. No, sir.

Q. Did you see him after the shooting?

A. Yes, sir.

Q. And where was he when you saw him?
A. They had almost put him in the car.
Q. They had almost put him, now, you are talking about Leon Chambers?
A. Yes, sir.
Q. All right, in whose car?
A. James Williams'.
Q. James Williams' car?
A. Yes, sir.
Q. All right, do you know who put him in James Williams car?
A. No, sir, I don't.
Q. Did you have anything to do with James Williams' car?
[fol. 277] A. No, sir.
Q. Well, let me ask you this, did you go anywhere in James Williams' car?
A. Oh, yes, sir.
Q. And where was that?
A. To Centerville.
Q. And who was in the car with you?
A. Me, Leon, James Williams and Gable McDonald.
Q. You and Leon Chambers and James Williams and Gable McDonald?
A. Yes, sir.
Q. All right, now, where were you sitting in the car?
A. In the back seat.
Q. And who, if anybody, was in the back seat with you?
A. Leon Chambers.
Q. Leon Chambers?
A. Yes, sir.
Q. All right, now, what was Leon Chambers condition at that time?
A. Well, I would say myself it was critical.
Q. It was critical?
A. Yes, sir.
Q. By that you mean he was hurt?
A. Yes, sir.
Q. Where was his injury, could you tell?
A. Sir?

Q. Where was he hurt?
A. In his head.
[fol. 278] Q. In his head?
A. Yes, sir.
Q. All right, was he bleeding?
A. Yes, sir.
Q. And who drove the car that you were in, Berkley?
A. James Williams.
Q. Was that his car, or do you know?
A. Yes, sir.
Q. It was his car?
A. Yes, sir.
Q. And where was Gable McDonald seated at that time?
A. In the front.
Q. All right, now, you rode with them over to Centerville?
A. Yes, sir.
Q. And what was the purpose of going to Centerville?
A. Taking Leon Chambers to the hospital.
Q. Taking Chambers to the hospital?
A. Yes, sir.
Q. All right, now, how long did you stay in Centerville?
A. I think it was better than a half hour.
Q. Better than half an hour?
A. Yes, sir.
Q. All right, then how did you leave Centerville?
A. With James Williams.
Q. James Williams, and who was with you?
A. Gable McDonald, James Williams and myself.
Q. Gable McDonald, James Williams and yourself?
A. Yes, sir.
[fol. 279] Q. All right, now, where did you go when you left Centerville?
A. Red Cain's place.
Q. Red Cain's place?
A. Yes, sir.
Q. And what did you do when you got to Cain's place?

A. Went in the place and got a foot tub and a rag and came back and washed the blood out the car.

Q. Washed the blood out of whose car?

A. James Williams'.

Q. Now, do you know whose blood that was?

A. Yes, sir.

Q. All right, now, then on the way either to or from Centerville in James Williams' car did you see any weapons, any guns?

A. Yes, sir, I did.

Q. What kind of guns, or can you describe what you saw?

A. A white handled pistol.

Q. A white handled pistol?

A. Yes, sir.

Q. All right, do you know who had—or who had that pistol when you saw it?

A. Well, it was passed to me.

Q. And who passed it to you?

A. Gable McDonald.

Q. All right, now, what did Gable McDonald tell you with reference to that pistol?

[fol. 280] BY MR. FORMAN:

Now, we object to that, what he told him.

BY THE COURT:

Sustained.

BY MR. SMITH:

Now, Judge, they have been allowed to develop all this, the reason behind McDonald and this statement business and I certainly think that we are entitled to put our side on too.

BY THE COURT:

It's conversation between two witnesses.

BY MR. FORMAN:

Witnesses at the scene of the crime, you can ask him anything about that but conversation anywhere away from that, I'll object to it.

BY THE COURT:

Sustained.

BY MR. SMITH:

Q. Gable McDonald handed you a white handled pistol?
A. Yes, sir.
Q. All right, what did you do with the pistol?
A. Laid it on the seat.
Q. You laid it on the seat?
A. Yes, sir.
Q. All right, now, when you got back to Woodville, let me ask you this, did you stop anywhere between Centerville and Woodville?
A. No, I can't recall.
Q. Coming back?
A. No, sir.
[fol. 281] Q. All right, so Red Cain's place was the first place you stopped at, is that right?
A. Yes, sir.
Q. And then after you got to Cain's place what became of the pistol, if you know?
A. Well, I don't know. When I got out the car I left it in there.
Q. You left the white handled pistol in the car?
A. Yes, sir.
Q. All right, you didn't see that again?
A. No, sir.
Q. Do you know whose pistol it was?
A. No, sir, I don't.
Q. You don't know?
A. No, sir.

BY MR. SMITH:

If the Court please, at this time we are going to have to ask that the Jury be excluded so that we can make our record.

BY THE COURT:

All right, let the Jury retire.

AND THEREUPON, the Jury was retired from the presence and hearing of the Court, and the fol- the Jury, to-wit:

BY MR. SMITH:

Q. Now, Berkley, when Gable McDonald handed you that white handled pistol, what did he tell you?

[fol. 282] (OUT OF HEARING OF JURY)

BY MR. FORMAN:

Now, just for the record, I want the record to show that the State is objecting to this testimony.

BY THE COURT:

You are objecting outside the presence of the Jury?

BY MR. FORMAN:

Yes, sir.

BY THE COURT:

All right.

BY MR. MULLINS:

And may the record further show that the reason that we are offering this proof is because there's basic evidence and eye witness testimony that Gable McDonald did the shooting and it's well settled law that the admission of a person that they did the shooting is admissible, especially where there is basic evidence already in the record to support admission by a third party

BY THE COURT:

I am going to overrule your objection since we are outside of the presence of the Jury and let them go ahead and make their record.

BY MR. SMITH:

Q. Now, Berkley, the question was when Gable McDonald handed you the white handled pistol, what did he say?

A. He told me, take this because I may need it.
Q. Take it because—
A. He told me to take this because I may need it.
Q. That you may need it?
A. Yes, sir.
Q. All right, did he say anything about his own gun?

[fol. 283[(OUT OF HEARING OF JURY)

A. No, sir, he didn't.
Q. He did not?
A. No, sir.
Q. All right, did at that time, either going to or coming back from Centerville, Gable McDonald tell you that he shot Aaron Liberty?
A. He said that he was the one.
Q. He said that he was the one that shot him?
A. Yes, sir.
Q. All right, now, Berkley, did he ever tell you that again?
A. He didn't put it in that word, but I met him, I don't know, about the following Sunday after then or a week later, but anyway he said just don't mess him up.
Q. Don't mess him up?
A. Yes, sir.
Q. Where did he tell you that?
A. Out at Jim Dixon's place.
Q. And where is that?
A. Buffalo.
Q. Out at Buffalo?
A. Yes, sir.
Q. And when he told you don't mess him up, you—
A. Well, I just figured that he was the one did it.
Q. He was the one that did it?
A. Yes, sir.
Q. And he had already told you that he did it?
A. Yes, sir.

[fol. 284] (OUT OF HEARING OF JURY)

BY THE COURT:

Is that all?

BY MR. SMITH:

Yes, sir.

BY MR. MULLINS:

We submit, if the Court please, that we are entitled to put that before the jury.

BY THE COURT:

Overruled, I'll sustain the objection to it. Let the Jury come on back.

AND THEREUPON, the Jury was returned to the presence and hearing of the Court, and the following proceedings were had, to-wit:

BY MR. SMITH:

Q. Now, then, Berkley, you stated that you were in Gladys' Cafe and had been there about thirty minutes drinking beer, you left there, Gladys' Cafe, and walked up Main Street and a rukus had started?
A. That's right.
Q. And you walked down there and you saw Liberty, you saw him shot, and then you went to the hospital with these two men?
A. No, I didn't see him—I mean, he wasn't shot when I first went around there.
Q. Liberty was not shot?
A. No, sir.
Q. Well, I believe you stated that when he was shot he was south of where you were standing?
A. That's right.

[fol. 285] BY MR. SMITH:

That's all, Judge.

CROSS EXAMINATION

BY MR. FORMAN:

Q. All you can tell this Jury, Berkley, is the fact that the man that got shot was to your right, that's all you know about it, is that right?
A. That's right.

Q. Now, who was in the cafe with you down at the cafe?
A. My brother-in-law.
Q. What's his name?
A. William Wiley.

BY MR. FORMAN:

All right, that's all.

BY MR. SMITH:

We have no further questions.

(witness excused)

AND THEREUPON, THOMAS RUSS, having been called as a witness on behalf of the Defense, and having first been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Now, speak up, Thomas, so that all of us can hear you and the Jury can hear you and the Court, and [fol. 286] the Court Reporter. What is your name, please?
A. Thomas Russ.
Q. And where do you live?
A. Woodville.
Q. Do you live right in town?
A. Yes, in the corporation.
Q. And that's in Woodville, Mississippi?
A. That's right.
Q. Now, then, do you know a man named Leon Chambers?
A. Yes.
Q. How long have you known him?
A. I don't know, but it's quite some time.
Q. Quite some time?
A. Yes.
Q. Do you know a man, or did you know a man named Aaron Liberty?
A. I know him.

Q. Now, then, did you have occasion to be in Woodville in June of 1969 when Aaron Liberty was killed?

A. Yes, I was.

Q. Where were you when Liberty was killed?

A. I was across the street in front of the coffee shop.

* * * *

[fol. 288] Q. Now, did you see Aaron Liberty at the time that he was shot?

A. Yes.

Q. You were able to see him?

A. Yes.

Q. All right, now, you told me that you know Leon Chambers, did you see him that night?

A. Yes.

Did you see Leon Chambers at the time that Liberty was being shot?

A. Yes.

Q. Did he shoot him?

A. No.

Q. Leon Chambers, it's your testimony, did not shoot Liberty?

A. No, sir.

Q. Did you see who did shoot the police officer?

A. No, sir, I didn't see who shot him.

Q. All right, now, you told me that your car was across the street from the coffee shop?

A. Yes.

Q. And you are positive that you saw Leon Chambers and he did not shoot him?

A. No, sir, he did not shoot him.

BY MR. SMITH:

That's all.

[fol. 292] AND THEREUPON, ALBERT CARTER, having been called as a witness on behalf of the Defense, and having first been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Now, Albert, talk loud enough so that I can hear you and the Jury can hear you and the lady taking your testimony down can hear you. Would you state your name, please?

A. Albert Carter.

Q. And where do you live?

A. Route 8, Box 800-C, Woodville.

Q. Mississippi?

A. That's right.

Q. Now, then, Albert, of course you know that Aaron Liberty was killed back in June of last year, of 1969?

A. Yes, sir.

Q. Did you know him yourself, did you know Liberty?

A. I had seed him, not much, I knowed about him.

Q. Now, were you in Woodville on that Saturday and that Saturday night?

A. No, sir.

Q. Where were you at that time?

A. At home.

Q. All right, now, on Sunday did you have an occasion to see Gable McDonald?

A. Yes, sir.

Q. And where was that?

A. At my house.

Q. Had you known Gable McDonald before this Sun-

[fol. 293] day morning?

A. Yes, sir.

Q. How long had you known Gable?

A. About twenty or twenty-five years.

Q. Twenty or twenty-five years?

A. Yes, sir.

Q. Now, back in June of 1969, Albert, did Gable McDonald live—or where did he live with respect to your house?

A. Oh, about three or four hundred yards.

Q. Three or four hundred yards from your house?

A. Yes, sir.

Q. All right, now, you said that you saw him that Sunday morning?
A. Yes, sir.
Q. Where did you see him?
A. At my house.
Q. At your house?
A. Yes, sir.
Q. All right, do you recall what time you saw him?
A. About nine or nine-thirty.
Q. About nine or nine-thirty, was any one else at your house at that time?
A. Not when he first came there, but Sammy Hardin, he come after he was there.
Q. Sammy Hardin came afterwards?
A. Yes, sir.
Q. All right, now then, what was the purpose of McDonald's visit to your home that Sunday morning?

[fol. 294] BY MR. FORMAN:

May it please the Court, we object to that, what his purpose of visiting there has no connection with this thing. It was after the crime has been completed and has no connection whatsoever with the case.

BY THE COURT:

Sustained.

BY MR. MULLINS:

We are reluctant to run the Jury out so much, but we must make our record, so we ask that the Jury be excluded.

BY THE COURT:

All right. Let the Jury retire again.

AND THEREUPON, the Jury was retired from the presence and hearing of the Court, and the following proceedings were had in the absence of the Jury, to-wit:

BY MR. SMITH:

Q. Now, then, Albert, Gable McDonald, came to your house on the Sunday after this shooting?

A. Yes, sir.
Q. All right, did you discuss the shooting?
A. No more than he told me what happened.
Q. All right, what did he say what happened?
A. When he walked up, I spoke and he spoke and I asked him what was the news and he said a heck of a lot, and I asked him what happened, and he said they had some shooting over in town and I said, yeah, who got shot or who got killed and he said Aaron Liberty got killed and Chambers got shot, he wasn't dead then but he was pretty sure he was dead by now.

[fol. 295] (OUT OF HEARING OF JURY)

Q. All right, now, at that time that morning did he say anything about who killed Aaron Liberty?
A. He didn't then.
Q. He didn't then?
A. No, sir.
Q. All right, now then at that time did he have anything with him, any weapon?
A. He didn't have it, but Sammy Hardin brought his there and give it to him.
Q. Brought a gun there and gave it to him?
A. Yes, sir.
Q. What kind of a gun was that?
A. It was a thirty-eight.
Q. All right, and Hardin gave this thirty-eight to McDonald?
A. Yes, sir.
Q. All right, now, after that morning, Albert, that Sunday morning, did you have an occasion to see him again that day?
A. I saw him that day.
Q. I am talking about McDonald.
A. Yes, sir, that day.
Q. All right, where was it, where did you see him?
A. It was at his house then.
Q. You went over to his house?
A. Yes, sir.
Q. All right, did you have any conversation at that time concerning this shooting?

A. I went there and he told me to come in he had something to show me. I went in there and he showed [fol. 296] me this gun.

Q. What gun was that?

A. A thirty-eight.

Q. Was it the same one that you had seen that morning?

A. Yes, sir.

Q. All right, did you find out whose gun it was?

A. He said it was Chambers gun.

Q. He said it was Chambers gun?

A. Yes, sir.

Q. Now, is that Leon Chambers?

A. That's right.

Q. All right, now, did he have anything else to say concerning the shooting of Aaron Liberty?

A. Not that day.

Q. Did he ever tell you, Albert, that he was the one that shot this man?

A. He did.

Q. He did?

A. Yes, sir.

Q. And when was the first time he told you that?

A. Well, the next day—well, the same day he told me he did it, he did the shooting.

Q. He told you the same day?

A. Yes, sir.

Q. All right, now, where were you when he told you that?

A. We went out to the spring and he went with me.

Q. You went to the spring?

A. Yes, sir.

[fol. 297] Q. To get water at the spring?

A. Yes, sir.

Q. And where is the spring located with reference to your house?

A. Right under the hill from his house.

Q. Right under the hill from his house?

A. Yes, sir.

Q. All right, now, was he at the spring when you got there?

A. No, we went together.
Q. You went together to the spring?
A. Yes, sir.
Q. All right and was that when he told you that he shot Aaron Liberty?
A. Yes, sir.
Q. Did he tell you why he shot him?
A. He said if he hadn't shot him, he was going to shoot him.

BY MR. FORMAN:

What was that, now, I didn't understand you?
A. He said If Mr. Liberty hadn't shot—I mean, if Gable hadn't shot Mr. Liberty, he was going to shoot him or somebody.

BY MR. SMITH:

Q. That's why he, Gable, shot Liberty because if he didn't Liberty was going to shoot him, Gable, or somebody?
A. Yes, sir.
Q. I see. Now, after that Sunday, Albert, did you have occasion to have any further conversation with Gable?
A. He asked me what must he do with the gun, and I [fol. 298] told him the best thing to do was to give it to Mr. Chambers' wife.
Q. To give the gun to Mr. Chambers' wife?
A. Right.
Q. All right, and do you know what became of Chambers' gun?
A. Well, he told me he had done buried it the next day or so.
Q. He told you that he had buried it?
A. That he had buried it.
Q. All right, did he tell you why he happened to have Chambers' gun?
A. He said he got it out the car because he didn't want the law to stop him. He didn't have nairn and he had got rid of the one he done the killing with.

Q. Did he tell you what kind of gun that was that he did the killing with?

A. Yes, sir.

Q. And what kind was that?

A. A twenty-two revolver.

Q. Did he tell you where he put the twenty-two?

A. Yes, sir.

Q. Where was that?

A. He said he had left it at Ed Cain's.

Q. He left the twenty-two at Ed Cain's?

A. Yes, sir.

Q. And then he had Chambers' gun?

A. Yes, sir.

Q. All right, now, after that Sunday, Albert, did you have any occasion to have any further conversation with [fol. 299] Gable about the shooting?

A. No, sir, not directly.

Q. Albert, were you ever with Gable when he bought a gun?

A. He went with me when he bought one of—at least, both of them.

Q. When he bought both of them?

A. Yes, sir.

Q. All right, and where did he buy the guns?

A. Gibson's.

Q. At Gibson's and where is Gibson's?

A. Sir?

Q. What town is Gibson's in?

A. In Natchez.

Q. And you were with him or he was with you?

A. He was with me.

Q. On both of these occasions?

A. Yes, sir.

Q. Do you know what kind of guns he bought?

A. Twenty-two. One twenty-two and a twenty-two magnum.

Q. He bought a plain twenty-two and then a twenty-two magnum?

A. Twenty-two magnum.

Q. All right, when did he buy the plain twenty-two?

A. That was before he did the killing.
Q. And then later he bought the plain magnum?
A. The magnum.

BY MR. SMITH:

That's all, Judge.

[fol. 300] BY MR. MULLINS:

We submit that the Jury is entitled to hear this and ask the Court to permit the Jury to hear this testimony.

BY THE COURT:

Do you have any objection?

BY MR. TUCKER:

Your Honor, we object to it because it's an attempt on their part to impeach their own witness, Gable McDonald.

BY MR. MULLINS:

We submit that because one witness testifies differently from another that doesn't keep you from introducing the other witness.

BY THE COURT:

Let's don't argue back and forth. Is there an objection by the State?

BY MR. FORMAN:

Yes, sir, Mr. Tucker has objected.

BY THE COURT:

Sustained.

* * * *

[fol. 309] AND THEREUPON, WILLIAM VAUGHN, having been called as a witness on behalf of the Defense, and having first been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Now, William, speak up so we can all hear you, and the lady there is going to take your testimony down. What is your name, please?

A. William B. Vaughn.
Q. And where do you live?
A. In Woodville.
Q. Woodville, Mississippi?
A. That's right.
Q. Where do you work, William?
A. I work in Davis' Cafe, Gladys Cafe, Miss Gladys Davis Cafe.
Q. That's Glady's Davis Cafe?
A. That's Miss Gladys Davis Cafe.
Q. Mrs. Gladys Davis Cafe, now, they call it Gladys' Cafe?
[fol. 310] A. They call it Gladys' Cafe.
Q. All right, now, were you working there in June of 1969?
A. I was.
Q. You were, and of course that, you know, was the day that Aaron Liberty was shot?
A. I know that.
Q. Do you know Aaron Liberty?
A. He was my first cousin.
Q. Aaron Liberty was your first cousin?
A. That's right.
Q. All right, now then what time did you go to work, William on that Saturday?
A. Seven o'clock.
Q. Seven o'clock in the morning?
A. That's right.
Q. At Gladys' Cafe there in Woodville?
A. That's right.
Q. All right, did you work all day?
A. I did.
Q. At Gladys' Cafe?
A. I did.
Q. Now then, during the time that you were on duty, well, let me ask you this, you started work at seven o'clock, were you still working after dark?
A. I was.
Q. All right, while you were in Gladys' Cafe did you hear any shooting, any shots?
A. I did.

Q. You did, all right. Now, at any time during that Saturday afternoon from, say, noon until you heard those [fol. 311] shots, did you see Gable McDonald in Gladys' Cafe?

A. He was not in there.

Q. He was not in there, do you know Gable McDonald?

A. I know him.

Q. All right, now after you heard those shots, William, did you see Gable McDonald in or near Gladys' Cafe?

A. After the shooting I seen him in the back door with a pistol in his hand.

Q. You saw him where?

A. In Gladys Davis back door with a pistol in his hand.

Q. Now, when you say Gladys Davis back door, are you talking about the back door of Gladys' Cafe?

A. The back door of the cafe.

Q. The back door in the back of the cafe?

A. That's right.

Q. And he had a gun in his hand?

A. That's right.

Q. Do you know what kind of gun that was?

A. No, I do not.

Q. But are you sure that was Gable McDonald that you saw?

A. That was Gable McDonald. If he was in here now I would point him out to you.

Q. All right, are you sure that was a gun he had in his hand?

A. That was a gun he had in his hand.

Q. It was a gun he had in his hand?

A. That's right.

[fol. 312] BY MR. SMITH:

That's all, Judge.

* * * *

1647

STATE OF MISSISSIPPI

vs.

LEON CHAMBERS

JURY VERDICT

This day came the State by her District Attorney and the accused, Leon Chambers, in person and represented by Hon. Clyde W. Mullins, Cecil Gill Smith, Jr., and George F. West, Jr., of Natchez, Mississippi, said defendant having been arraigned upon the Bill of Indictment filed herein and a plea of "Not Guilty" to the charge of "Murder" filed in said indictment having been entered, a Jury being called, came as follows: Mrs. Evelyn Jones, Jeanette Ferguson, D. C. Blalock, W. J. Seale, I. P. McDaniel, T. E. Duck, Lane Cockerham, Mrs. J. A. McGregory, W. W. Chisholm, C. D. Kirkland, Mrs. Agnes Busby, Mrs. C. A. Reid, and Mrs. V. J. Martin, alternate juror, who, being elected, accepted by both sides, and empaneled and specially sworn the issue joined to try, the Juror Jeanette Ferguson having been discharged, and replaced by the alternate juror, Mrs. V. J. Martin, during the trial, after hearing the evidence and arguments of counsel, receiving the instructions of the Court, the Jury then composed of Mrs. Evelyn Jones, D. C. Blalock, W. J. Seale, I. P. McDaniel, T. E. Duck, Lane Cockerham, Mrs. J. A. McGregory, W. W. Chisholm, C. D. Kirkland, Mrs. Agnes Busby, Mrs. C. A. Reid, and Mrs. V. J. Martin, retired to their room in charge of three Special Bailiffs, J. N. Reynolds, B. C. Roberts, and Mrs. Jessie Sewell, to consider their verdict, and afterwards returned into open Court the following verdict, to-wit:

> "We the Jury find the defendant guilty as charged; and fix his punishment at life in the State Penitentiary".

The defendant thereupon requested that the jury be polled, and upon a poll of the Jury in open Court, each

of said jurors answered the Court that the verdict of Guilty as Charged as set out above was his or her separate and individual verdict in this cause.

Thereupon, it is ordered that the defendant, Leon Chambers, be remanded to the custody of the Sheriff for sentence by the Court at a later day of this term.

ORDERED NOW, the Court adjourn until Thursday morning at Nine O'Clock A.M., October 29, 1970.

/s/ JAMES A. TORREY
Circuit Judge

IN THE CIRCUIT COURT
OF AMITE COUNTY, MISSISSIPPI

OCTOBER TERM, 1970

No. 1647

STATE OF MISSISSIPPI, PLAINTIFF

vs.

LEON CHAMBERS, DEFENDANT

SENTENCE

WHEREAS heretofore into open Court came the District Attorney who prosecutes for the State of Mississippi, and came also the defendant, Leon Chambers, in person, and represented by counsel, Clyde W. Mullins, Cecil Gill Smith, Jr., and George F. West, Jr., of Natchez, Mississippi, said defendant having been lawfully arraigned upon the bill of indictment lawfully returned by the Grand Jury of Wilkinson County, Mississippi, and filed herein charging the defendant with the crime of Murder, to which indictment the defendant had entered his plea of Not Guilty.

WHEREUPON both sides, the State of Mississippi, and the defendant, Leon Chambers, announced ready for trial, came a jury of twelve good and lawful jurors of Amite County called from the Special Venire of jurors summonsed to try this cause as follows: Mrs. Evelyn Jones, D. C. Blalock, W. J. Seale, I. P. McDaniel, T. E. Duck, Lane Cockerham, Mrs. J. A. McGregory, W. W. Chisholm, C. D. Kirkland, Mrs. Agnes Busby Mrs. C. A. Reid, and Mrs. V. J. Martin, who each being duly elected and accepted by both sides and empaneled and specially sworn the issues joined to try, in charge of J. N. Reynolds, B. C. Roberts, and Mrs. Jessie Sewell, appointed and specially sworn as bailiffs to attend and take charge of the jury as provided by law, and after hearing the evidence and the argument of counsel and receiving the instructions of the Court, the Jury retired to their room

in charge of said bailiffs to consider their verdict and presently returned into open Court the following verdict, to-wit:

> "We the jury find the defendant guilty as charged, and fix his punishment at life in the State Penitentiary".

THEREUPON it was ordered by the Court that the defendant, Leon Chambers, be remanded to the custody of the Sheriff for sentence by the Court at a later date of the term.

NOW, THEREFORE, on this day comes the State of Mississippi by the District Attorney, and also comes the defendant, Leon Chambers, in person and represented by counsel, George F. West, Jr., and being asked if he had anything to say before the sentence of the law was pronounced against him in this Court, answered "No".

WHEREUPON, it is ordered by the Court that the defendant, Leon Chambers, for his said offense and conviction therefor on the charge of Murder as charged in the bill of indictment herein filed against him, be, and he, the said Leon Chambers, is hereby sentenced to serve a term of all the remainder of his life in the State Penitentiary of the State of Mississippi, and he is hereby remanded to the custody of the Sheriff of Amite County, Mississippi, without bail, to await transportation to the State Penitentiary.

ORDERED AND ADJUDGED this the 30 day of October, 1970.

/s/ JAMES A. TORREY
Circuit Judge

IN THE CIRCUIT COURT
OF AMITE COUNTY, MISSISSIPPI

OCTOBER TERM, 1970

No. 1647

STATE OF MISSISSIPPI

vs.

LEON CHAMBERS, DEFENDANT

MOTION TO SET ASIDE VERDICT AND VACATE SENTENCE, OR IN ALTERNATIVE FOR NEW TRIAL

Now comes the Defendant, Leon Chambers, by his attorneys, and respectfully moves the Court to grant him a new trial of the above styled and numbered cause, and he assigns the following as ground therefor:

1st, the verdict of the jury is against the overwhelming weight of the evidence.

2nd, the Court erred in admitting certain evidence on behalf of the State over the timely objection of the Defendant.

3rd, the Court erred in refusing to declare Gable McDonald a hostile and adverse witness and permitting the Defendant to propound leading questions as on cross examination.

4th, the Court erred in refusing to permit the Defendant to introduce evidence corroborating the admission of Gable McDonald admitting the killing of Aaron Liberty.

5th, the Court erred in not sustaining the motion of the Defendant for a mistrial because of prejudicial argument of the County Attorney, Walker J. Carney, Jr., as shown by a Bill of Exceptions.

6th, the trial of the Defendant was not in accord with fundamental fairness guaranteed by the Fourteenth Amendment of the Constitution of the United States and Article Three, Sections Fourteen and Twenty-Six of the Constitution of the State of Mississippi.

7th, and for other reasons to be assigned on a hearing hereof.

Respectfully submitted,

/s/ GEORGE F. WEST, JR.
GEORGE F. WEST, JR.

FILED:
October 30, 1970

By /s/ H. K. Whittington
Circuit Clerk

IN THE CIRCUIT COURT
OF AMITE COUNTY, MISSISSIPPI

OCTOBER TERM, 1970

No. 1647

STATE OF MISSISSIPPI

vs.

LEON CHAMBERS, DEFENDANT

ORDER OVERRULING MOTION FOR A NEW TRIAL

This cause coming on for hearing on Motion of the Defendant to set aside the verdict and judgment and vacate the sentence; or in the alternative to direct a new trial, and the Court being of the opinion that the said Motion should be overruled;

It is hereby ordered and adjudged that the Motion to set aside the verdict and vacate the sentence; or in the alternative to direct a new trial, be and the same is hereby overruled.

ORDERED AND ADJUDGED, this the 30 day of October, 1970.

/s/ JAMES A. TORREY

FILED:

October 30, 1970
By /s/ H. K. Whittington
Circuit Clerk

IN THE CIRCUIT COURT
OF AMITE COUNTY, MISSISSIPPI

OCTOBER TERM, 1970

No. 1647 In Circuit Court of Amite County.

STATE OF MISSISSIPPI

vs.

LEON CHAMBERS

CERTIFICATE

I, H. K. WHITTINGTON, Clerk of said court, do hereby certify that at a term of said court beginning on the 19th day of October, 1970, A.D., and adjourning on the 30th day of October, 1970, the defendant was convicted of murder and sentenced to life imprisonment and that said defendant has taken an appeal to the Supreme Court of the State, giving Certificate of Appeal on Affidavit of inability to give bond or deposit amount of costs as sureties on cost bond and appeal on Affidavit of inability to give bond or deposit amount of costs as sureties on his appearance or bail bond.

Done this the 13th day of November, 1970, A.D., as witness my hand and official seal.

/s/ H. K. Whittington
H. K. WHITTINGTON,
Circuit Clerk

IN THE SUPREME COURT OF MISSISSIPPI

No. 46,379

LEON CHAMBERS

v.

STATE OF MISSISSIPPI

6571/A

PER CURIAM:

Leon Chambers and James Williams were indicted in the Circuit Court of Wilkinson County for the murder of Aaron Liberty on the night of June 14, 1969. A change of venue was granted to the Circuit Court of Amite County, and Chambers and Williams were jointly tried in that court on October 27, 1970. At the close of the evidence, a motion was made for a directed verdict for Chambers and Williams. The court sustained the motion as to James Williams, and overruled the motion as to Leon Chambers.

The jury returned the following verdict against Leon Chambers:

> "We the jury find the defendant guilty as charged, and fix his punishment at life in the State Penitentiary".

The court sentenced defendant Chambers to life in the State Penitentiary in accordance with the jury verdict. We affirm.

On the night of June 14, 1969, in the Town of Woodville, Mississippi, on First West Street, which runs north and south, Aaron Liberty, a black part-time policeman for the Town of Woodville, was shot in the back and side four times and was dead on arrival at the Centreville Hospital.

Woodville policemen Forman and Liberty had gone to Hayes' Cafe to arrest C. C. Jackson, against whom an affidavit had been made and an arrest warrant issued. A crowd of 20 or 30 blacks prevented these two officers from arresting Jackson and putting him in their patrol

car. After Forman had radioed for help, Liberty was standing on the west side of the street close to an alley between Jack's Coffee Shop on the north and the Health Center on the south.

Deputy Sheriffs Gordon Geter, Waldo Welch and Herman Anthony responded to the call for help, and Geter at the time of the shooting was in about the middle of the street facing Liberty, who had his back to the alley. A volley of five or six shots was fired from the alley, four of which hit Liberty in the back and side, and Liberty turned toward Welch and told him that he (Liberty) had been shot. Welch told him to "kill him", whereupon Liberty turned toward the alley and fired two shots from his riot gun down the alley. Liberty appeared to take deliberate aim on his second shot. The second shot hit defendant Leon Chambers in the head and neck and Chambers fell. Liberty then tried to walk to the patrol car, collapsed, was placed in the patrol car by his fellow officers, and taken to the Centreville Hospital. He was dead on arrival at the hospital.

Chambers was picked up and placed in the car of James Williams, who, with Gable McDonald and Berkley Turner as helpers, carried Chambers to the Centreville Hospital.

The shooting occurred on a Saturday night, and later that night Sheriff H. B. McGraw of Wilkinson County placed a guard at the door of Chambers' hospital room.

About five months later, that is, on November 10, 1969, Gable McDonald was taken to the law offices of Mullins and Smith in Natchez by Reverend Stokes, a black preacher, and in the presence of Clyde W. Mullins, Cecil G. Smith, Jr., and George F. West, Jr., attorneys for Chambers and Williams, and in response to questions propounded to him by Mullins, McDonald, an illiterate black, confessed that he shot Officer Liberty with a 22-caliber revolver. The statement was typed up, read by West to McDonald, and then signed by mark and sworn to by McDonald.

McDonald was arrested and placed in jail, where he remained until a preliminary hearing for him before a

justice of the peace on December 9, 1969. McDonald completely repudiated his confession. He testified at his preliminary hearing that Sammy Hardin had told his (McDonald's) wife that Reverend Stokes wanted to see him and for her to write him where he was working in Louisiana. McDonald received this message on Wednesday or Thursday and came to Natchez on Saturday of that week, and went to Reverend Stokes' filling station. Stokes took him to a little storage room on the side of the filling station and talked with him about confessing that he killed officer Liberty. McDonald testified that Stokes had a long tablet with some handwriting on it, and that:

> "He asked me about owning the killing of Sonny Liberty. I told him I couldn't do that. I said if I do they'll send me to the pen owning something like that. He said, no, the law ain't going to know nothing about it. He just wanted the statement. Wasn't no law or nothing, I wouldn't have to go to jail or nothing."

McDonald testified further that Stokes told him on that occasion:

> "He said he would sue the Town for so many thousand dollars and he said that would be divided between the three of us. I disremember now how many thousand dollars it was."

The three referred to were James Williams, Leon Chambers, and McDonald.

McDonald stated that Stokes rehearsed him on his answers for about three hours that Saturday morning; that Stokes then contacted West, the attorney; that West told Stokes to have McDonald return on Monady and they would have a stenographer to take down his statement. McDonald did return the following Monday, went to Stokes' filling station, was again rehearsed by Stokes on the answers he should give, and was then taken by Stokes to the law offices of Mullins and Smith.

McDonald was called as a witness for the defense, was allowed to testify about his confession, Reverend Stokes' promises to him, and his subsequent repudiation of his

confession. He testified that he did not kill Liberty and had nothing whatsoever to do with the killing. Appellant renewed his motion to be allowed to examine McDonald as an adverse witness, which motion the court overruled.

Deputy Sheriff Geter testified for the State that he was facing Liberty at the time he was shot, and that he saw Leon Chambers shoot Liberty in the back and he saw Chambers with the gun in his hand.

Deputy Sheriff Welch testified that he saw Chambers break his right hand down, and immediately thereafter heard five or six shots fired, but he did not actually see the gun in Chambers' hand. Welch did testify that when Liberty told him that he was shot, he told Liberty to "kill him" and that Liberty then turned and fired two shots down the alley, taking deliberate aim on his second shot and hitting Chambers with it.

Sammy Hardin testified for the defendant that he saw Gable McDonald shoot Liberty, and that he was positive of that.

William Vaughn testified that he did not see McDonald at Gladys' Cafe until after the shooting, and that he saw McDonald in the back door of the cafe with a gun in his hand.

Thomas Russ testified that he was driving his car north on First West Street, that he was prevented from proceeding by the crowd; that he saw Liberty when he was shot; that he saw Chambers about six or eight feet from Liberty but was positive that Chambers did not shoot Liberty.

Albert Carter, called as a witness for the defendant, testified that he was not in Woodville on Saturday, June 14, 1969, when the shooting occurred, but that the next day Gable McDonald came to his house. After the jury had been excluded, Carter testified that later on, on that Sunday, he went to McDonald's house, and that as they walked to a spring near his house that McDonald told him that he did the shooting. Carter, upon being asked if Gable told him why he shot Liberty, answered:

> "He said if Mr. Liberty hadn't shot—I mean, if Gable hadn't shot Mr. Liberty, he was going to shoot him or somebody."

The trial judge excluded this testimony from the jury on the ground of hearsay.

Also excluded from the jury on the ground of hearsay was the testimony of Berkley Turner that on the way back from Centreville Hospital where they had delivered Leon Chambers that Gable McDonald said that he was the one who shot Aaron Liberty.

Two of the eight errors assigned were:

(1)

> The lower Court erred in refusing to permit the Defendant to examine Gable McDonald as an adverse, hostile witness.

(2)

> The lower Court erred in refusing to admit testimony corroborating a third party confession after the confession was introduced and supported by eye witness testimony.

The trial judge did allow the confession of Gable McDonald to be introduced and his subsequent repudiation of it at his preliminary hearing on December 9, 1969. He allowed extensive direct and cross-examination of McDonald about his confession, his subsequent repudiation, his actions and conduct on the night of the murder.

McDonald's testimony was not adverse to appellant; it was merely in McDonald's defense and in explanation of his rather unusual confession. Nowhere did he point the finger at Chambers. The trial judge did not abuse his discretion when he refused to allow the appellant to examine McDonald as an adverse witness.

Sammy Hardin was allowed to testify that he saw McDonald shoot Liberty; William Vaughn was allowed to testify that he saw McDonald in the back door of Gladys' Cafe immediately after the shooting with a gun in his hand; Thomas Russ was allowed to testify that he was in his car in the middle of First West Street, that he saw the shooting and was positive that Chambers did not do it.

The only testimony that the trial judge excluded from the jury was the hearsay testimony of Albert Carter and Berkley Turner that McDonald had admitted to them that he did the shooting. He was correct in so doing.

In this case, the trial court went considerably further in allowing testimony from and about a mere witness than any Mississippi court has ever done in the past. *See* Roundtree v. State, 107 Miss. 166, 65 So. 125 (1914), and Brown v. State, 99 Miss. 719, 55 So. 961 (1911). 22A C.J.S. *Criminal Law* § 749, page 1115 (1961), says the reason for excluding testimony like Carter's and Turner's is because it is hearsay testimony.

This case went to the jury on conflicting testimony. McDonald's connection with the case was fully and carefully explored. It was up to the jurors as to which witness or witnesses they would believe, and how much of each witness's testimony they would believe. They weighed the testimony of each witness as was their solemn duty; we cannot say that they were wrong in believing some witnesses and disbelieving others.

There was ample testimony to support their verdict, and the judgment of the trial court is affirmed.

AFFIRMED.

ALL JUSTICES CONCUR EXCEPT RODGERS, J., WHO DISSENTS.

IN THE SUPREME COURT OF MISSISSIPPI

No. 46,379

LEON CHAMBERS

v.

STATE OF MISSISSIPPI

6571/B

RODGERS, JUSTICE, DISSENTING:

With deference to the considered opinion of my colleagues, I am constrained to voice my contrary conclusions. I am convinced that the testimony of the defense witnesses, Berkley Turner and Albert Carter, should have been admitted in evidence to the jury. These witnesses testified in the absence of the jury that one Gable McDonald told them that he shot the deceased policeman, Aaron Liberty.

Gable McDonald was called as a witness for the defendant and he admitted that he had given a signed confession in which he admitted the killing of Aaron Liberty, but denied that the confession was voluntary. The defendant requested the right to cross-examine the witness as to his explanation of the confession. The court refused to permit the defendant to cross-examine the witness upon the ground that he was hostile. The defendant was thus prevented from laying a predicate to impeach the witness. It must be emphasized that the court permitted the defendant to show the confession of Gable McDonald by his own testimony. Gable McDonald was alive, not beyond the jurisdiction of the court, and he did not object to being questioned in open court upon the ground that his testimony might incriminate him. His testimony in effect denied that he in fact made a confession.

I am of the opinion that the trial court was correct in admitting the confession of Gable McDonald, although this Court has held to the contrary in the cases of *Brown* v. *State*, 99 Miss. 719, 55 So. 961 (1911), and *Roundtree* v. *State*, 107 Miss. 166, 65 So. 125 (1914). The

reason given for the exclusion of this testimony is that the testimony is hearsay. *See*: 22A C.J.S. *Criminal Law* § 749, page 1115 (1961).

The fallacy followed by our Court and others originated in *The Sussex Peerage* case, XI Cl. & Fin. 85, 8 Eng. Rep. 1034 (1844), in England. *See*: Conn. Bar Journal, Vol. 44, pages 276, 277 (1970); Fordham L. Rev., Vol. 39 No. 1 (1970). Declarations against interest had been admitted in evidence for over two hundred years prior to *Sussex* as an exception to the hearsay rule as to admissions against interest in a pecuniary or proprietary interest case. In the *Sussex* case a party attempted to establish his parents' lawful marriage by the admission of a deceased person's declaration that he had married the couple under circumstances which made the act criminal. The court held the declaration against penal interest to be inadmissible and warned against extending exceptions to the hearsay rule. The rule in the *Sussex* case was adopted by the United States Supreme Court in *Donnelly* v. *United States*, 228 U.S. 243, 33 S.Ct. 449, 57 L.Ed. 820 (1913). Justice Holmes wrote a dissenting opinion in which he cites 2 Wigmore on Evidence §§ 1476, 1477.

There can be little question but that the modern trend is to admit the admissions as an exception to the hearsay rule in penal cases as well as in pecuniary or proprietary cases where, (1)material, (2) where the declarant is dead, (3) beyond the jurisdiction of the court, or where he is in court and refuses to testify on the ground of self-incrimination. People v. Brown, 26 N.Y.2d 88, 308 N.Y.S. 2d 825 (1970); People v. Spriggs, 36 Cal. 841, 389 P.2d 377 (1964); Mason v. United States, 257 F.2d 359 (10th Cir. 1958); People v. Lettrich, 413 Ill. 172, 108 N.E.2d 488 (1952); Newberry v. Commonwealth, 191 Va. 445, 61 S.E.2d 318 (1950); Fordham L. Rev., Vol. 39 No. 1, page 136 (1970); Conn. Bar Journal, Vol. 44, pages 276, 277 (1970); Thomas v. State, 186 Md. 446, 47 A.2d 43 (1946). The *Sussex* rule was changed so as to admit confessions in American Law Institute Model Code on Evidence, Rule 509, page 255, illustration number 4 (1942).

My colleagues point out that the witness was on the witness stand and the defendant laid no predicate to introduce other confessions. The answer to this postulate is that the court would not permit the defendant to cross-examine his witness.

In any case, however, it seems to me that since the court had permitted the witness, Gable McDonald, to testify that he had confessed to killing the policeman but denied the truth of the confession, the defense should have been permitted to show that McDonald had confessed to several persons. It must be remembered that witnesses testified that they saw McDonald shoot the policeman. It is abundantly clear that the witness was at the place where, and at a time when, he could have shot the policeman. Moreover, he was seen with a gun in his hand at the time of the fatal shooting. See the cases cited on this subject in 167 A.L.R. 394, 401 (1947).

I am convinced that it was a reversible error to exclude the testimony of other confessions in this case.

IN THE SUPREME COURT OF MISSISSIPPI

Monday, June 28, 1971, Court Sitting

46 379

LEON CHAMBERS

vs.

STATE

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Amite County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 30th day of Ocotber, 1970—a conviction of MURDER and a sentence to serve a Term of LIFE in the State Penitentiary—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Amite do pay the costs of this appeal to be taxed.

MINUTE BOOK "BP", PAGE 391.

IN THE SUPREME COURT OF MISSISSIPPI

September 14, 1971, Court Sitting

46 379

LEON CHAMBERS

vs.

STATE OF MISSISSIPPI

This cause this day came on to be heard on the petition for a rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied doth order and adjudge that said petition be and the same is hereby denied.

MINUTE BOOK "BP", PAGE 406.

SUPREME COURT OF THE UNITED STATES

No. A-566, October Term, 1971

LEON CHAMBERS, PETITIONER

v.

MISSISSIPPI

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 23, 1971.

/s/ Potter Stewart
Associate Justice of the
Supreme Court of the
United States

Dated this 29th day of November, 1971

SUPREME COURT OF THE UNITED STATES

No. A-785 (No. 71-5908)

LEON CHAMBERS, PETITIONER

v.

MISSISSIPPI

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the petitioner be admitted to bail pending final disposition of the petition for a writ of certiorari in the above-entitled case. This order is conditioned upon the posting and approval of a good and sufficient bail bond in the sum of Fifteen Thousand Dollars $15,000.00), said bond to be posted with and approved by the Supreme Court of Mississippi, or a judge thereof, and when so posted and approved to be filed with the clerk of that court.

This order is subject to the following conditions:

(1) Petitioner, within 24 hours after his release shall report to the local sheriff and shall report regularly thereafter.

(2) Petitioner, as specified in his application, shall live at home and shall make every effort to find employment at the earliest possible date.

/s/ Lewis F. Powell, Jr.
Associate Justice of the
Supreme Court of the
United States

Dated this 1st day of February, 1972.

SUPREME COURT OF THE UNITED STATES

No. A-785

LEON CHAMBERS,

v.

STATE OF MISSISSIPPI

APPLICATION FOR RECONSIDERATION OF ORDER ADMITTING PETITIONER TO BAIL

[February 14, 1972]

MR. JUSTICE POWELL, Circuit Justice.

On January 31, 1972, counsel for Leon Chambers, petitioner in No. 71-5908, filed with me, as Circuit Justice for the States constituting the Fifth Circuit, an application for bail pending consideration of his petition for writ of certiorari. Petitioner's counsel detailed the reasons making it appropriate for me to exercise my discretion, under 18 U.S.C. § 3144, to admit this petitioner to bail. A copy of his certiorari petition, which raises two non-frivolous constitutional questions, was also attached to his application. The Attorney General of Mississippi declined to file a response objecting to the application.

On February 1, 1972, after careful review of petitioner's application, I entered an order admitting him to bail. In order to assure that petitioner would not flee or pose a danger to any other person, I imposed a number of conditions on his release. He was required to post bail bond in the sum of $15,000; to live at home with his family in his hometown of Woodville, Mississippi; to find employment; and to report, immediately upon release and periodically thereafter, to the local sheriff.

Ten days later, on February 11, 1972, the Attorney General of Mississipp filed an application for reconsideration of my order admitting petitioner to bail. Although the Rules of this Court do not provide for such

an application, I have carefully re-examined all papers submitted including a response from petitioner's counsel.

The Attorney General, in addition to contending that petitioner's case is frivolous, asserts that petitioner's "return to the community will create a dangerous situation to citizens of that community." In support of this latter allegation, he proffers the affidavits of the County Sheriff, the local Police Commissioner, and the Chief of Police of Woodville. In conclusory terms, these documents state that petitioner's presence will create a tense and explosive situation in the community, which might result in bloodshed. No specific facts are stated in support of the opinions expressed. On the contrary, it appears that this petitioner's roots in the community and record of good behavior merit his release pending final determination of his case. Petitioner is a lifelong resident of Woodville; he owns a home, subject to a mortgage; he has a wife and nine children there; he served for a period on the Woodville police force; he is a deacon in the local Baptist Church; and he has no prior criminal record. Before his trial he was released on bail for approximately 14 months, apparently without incident. During his period of incarceration after his conviction it appears that petitioner was a model prisoner.

On this record, I am unable to conclude that petitioner's mere presence in the community poses such a threat to the public "that the only way to protect against it would be to keep [him] in jail." *Sellers* v. *United States*, 89 S. Ct. 36, 38, 21 L, Ed. 2d 64, 67 (1968) (Black, J.).

The order admitting petitioner to bail is hereby reaffirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 71-5908

LEON CHAMBERS, PETITIONER

v.

MISSISSIPPI

On petition for writ of Certiorari to the Supreme Court of the State of Mississippi.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 20, 1972

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FILE COPY

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MAY 31 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-5908

LEON CHAMBERS,
Petitioner,

v.

STATE OF MISSISSIPPI,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

BRIEF FOR THE PETITIONER

PETITION NOT PRINTED
RESPONSE NOT PRINTED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-5908

LEON CHAMBERS,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of Mississippi with the dissenting opinion of Justice Rogers (A. 150-58)[1] is

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[1]References to "A." are to the single printed appendix which the parties prepared for the Court. References to "R." are to the original record of the circuit court of Amite County which has been filed with the Clerk.

reported at 252 So. 2d 217 (1971). No opinion was rendered by the circuit court of Amite County, Mississippi.

JURISDICTION

The judgment of the Supreme Court of Mississippi was entered on June 28, 1971 (A. 159), and rehearing denied on September 14, 1971 (A. 160). Mr. Justice Stewart signed an order on November 29, 1971, extending to December 23, 1971, the time for filing the petition for writ of certiorari. The petition for writ of certiorari was filed on December 23, 1971, and was granted on March 20, 1972 (A. 165). The jurisdiction of this Court rests on 28 U.S.C. §1257(3). Mr. Justice Powell admitted the petitioner to bail by entering an order on February 1, 1972 (A. 162) that he reaffirmed with opinion on February 14, 405 U.S. 1205 (A. 162-63).

QUESTIONS PRESENTED

The petitioner Leon Chambers was charged with murder and put on trial for his life. He based his defense on being able to show that another man, Gable McDonald, had repeatedly confessed to the crime. State rules of evidence prevented him, however, from demonstrating his innocence. First, Mississippi hearsay rules prevented Chambers from introducing McDonald's oral confessions. Second, when McDonald appeared as a defense witness and retracted his written confession, Mississippi witness rules prevented Chambers from cross-examining and impeaching him. The questions presented are:

1. Does the Mississippi hearsay rule violate the due process clause of the Fourteenth Amendment and the compulsory process clause of the Sixth Amendment

insofar as it prevents witnesses for the accused from testifying that someone else confessed to the crime?

2. Does a witness for the accused become a witness against him, within the meaning of the Sixth and Fourteenth Amendments, when he gives material testimony that directly contradicts the defense?

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the Constitution of the United States provides in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right. . .to be confronted with the witnesses against him [and] to have compulsory process for obtaining witnesses in his favor. . . ."

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> "Section 1. . . .[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

STATEMENT

The petitioner Leon Chambers was convicted in October, 1970, and sentenced to life imprisonment for the murder of Officer Aaron Liberty. Chambers asserted his innocence at trial and based his defense on showing that another, Gable McDonald, had killed Officer Liberty.

Mississippi rules combined to prevent Chambers from offering McDonald's oral confessions, and from cross-examining and impeaching McDonald as an adverse witness. He argued on appeal that the Mississippi hearsay and witness rules were unconstitutional as applied, insofar as they prevented him from proving his innocence. The Supreme Court of Mississippi affirmed his

conviction on June 28, 1971, over the dissent of Justice Rogers (A. 150-58).

1. The Shooting

Officer Liberty, a black policeman, was killed on the night of June 14, 1969, while making an arrest. An unruly crowd of fifty to sixty blacks had gathered to prevent him and fellow officers from arresting a black youth for disturbing the peace. While standing guard with a riotgun, Liberty was shot four times in the back and side from somewhere in the alley behind him. He could not have seen who shot him (A. 63; R. 208, 245), but before he died, he turned and fired two shots into the alley.

The first shot passed over the heads of the crowd. The second struck petitioner Chambers who, by that time, was running down the alley (R. 246). Chambers fell to the ground with severe head wounds. The officers assumed he was dead and left him in the alley.[2] He lay there until several acquaintances, including Gable McDonald, gathered him up and drove him to the hospital. When the sheriff learned that night that Chambers was still alive and wounded, he placed him under arrest.

2. The Pretrial Proceedings

Chambers and one James Williams[3] were jointly indicted in October, 1969, for the murder of Officer

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[2]Deputy Sheriff Anthony: "[T]his man fell, and fell so hard, I never seen anything fell no harder and wasn't dead" (R. 184); Deputy Sheriff Geter: "I though he was blowed all to pieces" (R. 216).

[3]There was no evidence that more than one person shot Officer Liberty. The shots all apparently came from a single

Liberty. The Reverend Stokes, a local preacher and civil rights leader, learned meanwhile that Gable McDonald had admitted within hours of the shooting that it was he who killed Officer Liberty. Acting on his own initiative, Stokes contacted McDonald shortly after Chambers was indicted. McDonald talked with Stokes on November 8, 1970, and agreed to give a sworn confession.

Stokes called Chambers' lawyer and informed him, for the first time, that McDonald had confessed to the murder (R. 362-64). They arranged a meeting for the following Monday, November 10, at which McDonald gave a sworn statement that he shot Officer Liberty (A. 13-18; R. 361-74). The statement was then read back to McDonald, and he signed it under oath.

McDonald freely confessed to the murder, despite his own apprehension about repeating the confession in court.[4] He was confessing, he said, because another

.22-caliber gun. The fact that the state proceeded against both Chambers and Williams belies any suggestion that it knew who shot Officer Liberty.

The state could not prove that Williams shot Officer Liberty. Williams was present at the scene of the attempted arrest. He was wrestling with the police and shouting "kill 'em" about the time Officer Liberty was shot. Later, he used his car to drive Chambers to the hospital. But that was all. The court directed a verdict in his favor after presentation of the state's case (R. 496).

[4]Q. You heard [the Reverend] Mr. Stokes that he had told you to tell the truth, and nothing but the truth. You realize that you are not under arrest, that you are not detained in any way by us or anyone else. A. Yes, sir.

Q. Did you come voluntarily? A. Yes.

Q. Nobody compelled you to come? A. No.

* * * * *

Q. I want to make it clear to you that you are not compelled to tell us anything; do you understand that? A. Yes, sir.

[footnote continued]

person (James Williams) already knew that he killed Liberty (A. 15-17). He said that he used his own gun to shoot Officer Liberty, and discarded it afterwards. He specifically described the unusual weapon as a nine (9) cartridge .22-caliber revolver. McDonald was then taken to the sheriff, who placed him under arrest.

McDonald retracted his signed confession one month later (A. 19-59). He claimed at his preliminary hearing in December that the Reverend Stokes induced him to confess by promising that he "wouldn't have to go to jail" (R. 50), and that he would share in the proceeds of a lawsuit by Chambers against the City of Woodville. He denied that he shot Officer Liberty and claimed that he was in a local cafe at the time of the shooting.

The state did not challenge McDonald's retraction. It was apparently unaware that McDonald had independently and separately confessed to three of his acquaintances within hours after the shooting. The justice of the peace accepted McDonald's retraction and, in the absence of other evidence, dropped the charges against him.

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* * * * *

Q. Who shot Officer Liberty? A. I did.

Q. What type of gun did you use? A. A .22 caliber.

Q. Who did it belong to? A. Me.

* * * * *

Q. Where was Officer Liberty? A. Right in front of me.

Q. Where did the shot strike his body? A. I imagine it did, he flinched.

* * * * *

Q. Are you willing to testify in court if you are called upon to do so? A. No, not unless I had to.

Q. But if you were called upon to do so would you tell the truth? A. I do not know, it is pretty rough in some things. (A. 13-18).

3. The Trial

Ten months later, in October, 1970, Chambers was put on trial for his life.[5] He defended his innocence on two grounds.

First, he denied that he shot Officer Liberty. Thomas Russ, who stood near and watched Chambers during the shooting, swore that Chambers did not shoot Officer Liberty (A. 131-32). Three of Liberty's fellow officers, including a deputy sheriff who was standing three feet from Liberty (R. 183) and six feet from Chambers (R. 242), denied seeing Chambers with a gun.[6] The state never found the .22-caliber murder weapon, despite a "diligent search" of the alley where Chambers fell (R. 228). Nor was there any evidence that Chambers owned a .22-caliber gun.

Second, and again in his own defense, Chambers accused Gable McDonald of killing Officer Liberty. The external evidence pointed to McDonald. One witness, who saw McDonald in the alley, swore that he saw McDonald shoot Liberty (A. 70). Officer Liberty's first cousin, William Vaughn, saw McDonald carrying a pistol immediately after the shooting (A. 139-41). Finally, McDonald admitted that he owned two .22-caliber pistols—a nine-shot .22 that he "lost" before the shooting, and another .22 magnum that he purchased just after the shooting (A. 80-82, 138-39; R. 353).

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[5]Venue was transferred to Amite County from Wilkinson County after the defense submitted that the malice of the local police and sheriff's office would frustrate the impaneling of an impartial jury in Wilkinson County (A. 6-9).

[6]A fourth deputy sheriff, Gordon Geter, remembered at trial that he had seen Chambers shoot Officer Liberty sixteen months earlier. Yet the record shows that Geter spent the very day after the murder nervously questioning members of the black community to discover who shot Liberty (R. 304-06).

Chambers based his case against McDonald on McDonald's own confessions. But a hapless combination of rules frustrated his defense. On the one hand, Mississippi hearsay rules barred his witnesses from repeating McDonald's oral confessions. On the other hand, after McDonald appeared as a defense witness and retracted his written confession, Mississippi witness rules barred the defense from cross-examining him and from impeaching him with prior oral confessions.

Chambers began his defense as follows: He first moved to introduce McDonald's oral confessions. He called Sam Hardin who had grown up with McDonald and attended church with him. Hardin drove McDonald home after the shooting. On the way home, McDonald confessed that he shot Officer Liberty.[7] However, the state objected that the confession was hearsay, and the court instructed the jury to disregard it (A. 73).

Chambers tried next to offer McDonald's second confession. He called Berkley Turner who knew McDonald and helped him carry Chambers to the hospital. The court refused, however, to permit Turner to testify in the presence of the jury. Turner was allowed to make his statement only after the jury had been excused. He stated for the record that on the way to the hospital McDonald told him that he shot Liberty. McDonald also warned Turner several days later not to go to the police ("mess him up").[8]

---

[7]A. When I got ready to come home, he come and asked me, he said, can I go home with you. I told him, yes, you can go home with me.

* * * * *

Q. All right, now, on that ride home, did Gable McDonald tell you that he had killed Aaron Liberty or shoot him? A. He did. (A. 73).

[8]Q. All right, did at that time, either going to or coming back

The defense tried to offer McDonald's confession to Turner as a hearsay exception for declarations against penal interest. The court refused to recognize such an exception (A. 128). The jury was not allowed to hear McDonald's confession to Turner.

Denied the benefit of McDonald's oral confessions, the defense offered his written confession. To lay a basis for the sworn statement, the defense had no choice but to call McDonald as a defense witness.[9] At the same time, because McDonald had already retracted his written confession once, the defense moved to examine McDonald as an "adverse witness" through the use of leading questions and cross-examination (A. 10-12). The court subpoenaed McDonald as a defense witness, but reserved ruling on the adverse-witness motion (A. 60-61).

On that basis, the defense examined McDonald narrowly. It questioned him only for the limited purpose of authenticating his written confession and reading it to the jury. It refused to provoke statements from McDonald that it could not cross-examine or impeach.

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from Centerville [Hospital], Gable McDonald tell you that he shot Aaron Liberty? A. He said that he was the one.

* * * * *

Q. All right, now, Berkley, did he ever tell you that again? A. He didn't put in that word, but I met him I don't know, about the following Sunday after then or a week later, but anyway he said just don't mess him up.

* * * * *

Q. And when he told you don't mess him up, you– A. Well, I just figured that he was the one did it.

* * * * *

Q. And he had already told you that he did it? A. Yes, sir. (A. 129).

[9]Mississippi makes no provision for the court to call its own witnesses.

When examined in turn by the state, McDonald retracted his sworn confession and denied any part in the shooting. He said that he was drinking beer with Berkley Turner at the time. He denied carrying a gun that day and claimed to have lost his own nine-shot .22 revolver several months before the shooting (A. 94-120).

McDonald's testimony for the state directly contradicted evidence in the record. Berkley Turner denied even seeing McDonald before the murder (A. 122). William Vaughn testified that he saw McDonald with a gun just after the shooting (A. 141). Sam Hardin said that he personally saw McDonald shoot Officer Liberty (A. 70).

More important, McDonald's testimony directly contradicted the case for the defense. Chambers based his defense on showing that it was not he, but McDonald who killed Liberty. Yet when he moved again to cross-examine McDonald, the court ruled that McDonald was not "adverse" to him under Mississippi law:

> "He may be hostile, but he is not adverse in the sense of the word, so your request will be overruled" (A. 121).

Finally, denied the right to cross-examine McDonald, the defense tried to impeach him with still a third prior confession. It called Albert Carter. McDonald had known Carter for twenty-five years and visited him the day following the murder. But the court again excused the jury, and did not allow it to hear Carter's testimony.

Carter then stated for the record that McDonald had confessed to the shooting (A. 133-39). McDonald explained to Carter that he shot Officer Liberty because he was afraid that otherwise, Liberty would shoot him. He told Carter that he used his own .22 revolver and that he concealed it after the shooting.[10]

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[10]Q. Did he [Gable McDonald] ever tell you, Albert, that he was the one who shot this man? A. He did.

The defense offered Carter's testimony—not as hearsay—but for the purpose of impeaching McDonald with a prior inconsistent statement. The court rejected the offer. It had already barred the defense from cross-examining McDonald, and on the same basis, it now barred the defense from impeaching him with a prior confession (A. 139).

4. The Verdict and Appeal

On October 29, 1970, the jury found Chambers guilty of murder and imposed a sentence of life imprisonment. The defense moved under the Fourteenth Amendment to set aside the verdict for failure to receive McDonald's oral confessions and to permit the defense to cross-examine and impeach McDonald (A. 146-47) The motion was denied (A. 148).

Chambers appealed his conviction to the Supreme Court of Mississippi. He urged the court to treat McDonald's oral declarations against interest as an exception to the state hearsay rule and argued in addition, that he had a federal constitutional right to call Hardin, Turner and Carter as witnesses on his behalf. He also argued that he had a right under both state law and

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* * * * *

Q. Did he tell you why he shot him? A. He said if he hadn't shot him, he was going to shoot him.

* * * * *

Q. That's why he, Gable, shot Liberty because if he didn't Liberty was going to shoot him, Gable, or somebody? A. Yes, sir.

Q. Did he tell you what kind of gun that was that he did the killing with? A. Yes, sir .... A twenty-two revolver.

* * * * *

Q. Did he tell you where he put the twenty-two? A. Yes, sir .... He said he had left it at Ed Cain's. (A. 137-38).

federal constitutional law to cross-examine and impeach McDonald as a witness against him.

The court did not expressly address his constitutional claims, but nonetheless implicitly denied them (A. 150-55).[11] It held that McDonald's oral confessions were inadmissible under the Mississippi hearsay rule. In doing so, it rejected a proposal by Justice Rogers to create a hearsay exception for declarations against penal interest. It further held that Chambers had no right to cross-examine and impeach McDonald as a witness against him, because McDonald did not directly incriminate him:

> "McDonald's testimony was not adverse to appellant; it was merely in McDonald's defense and in explanation of his rather unusual confession. Nowhere did he point the finger at Chambers" (A. 154).

Justice Rogers, in dissent, would have allowed Chambers to offer McDonald's prior confessions to impeach him (A. 156-58).

SUMMARY OF THE ARGUMENT

Chambers was denied a fair trial in violation of the Sixth and Fourteenth Amendments. The Mississippi hearsay rule barred him from offering the exculpatory testimony of witnesses in his favor. The party-witness rule barred him from confronting the witnesses against him. They effectively prevented him from putting on a defense.

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[11]The constitutional questions were properly before the court below and necessarily passed upon. See *Street v. New York*, 394 U.S. 576, 581-82 (1969).

I. The Mississippi hearsay rule is unconstitutional, as applied in this case, because it deprived Chambers of exculpatory testimony for no legitimate reason. The rule bars the accused in a criminal proceeding from offering third-person confessions to exculpate himself. It operated here to prevent witnesses for Chambers from testifying that another, Gable McDonald, had confessed to the murder of Officer Liberty.

Chambers has a constitutional right to offer testimony on his behalf. The Due Process Clause of the Fourteenth Amendment prohibits the states from denying the accused the benefit of exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83 (1963). Due Process gives the accused not only access to material evidence in his favor, but an opportunity to offer it on his behalf.

The Fourteenth Amendment further protects exculpatory testimony through the Compulsory Process Clause of the Sixth Amendment. The Compulsory Process Clause guarantees the accused the benefit of "witnesses in his favor." It entitles him to secure their presence at trial and offer their testimony to the jury. *Washington v. Texas*, 388 U.S. 14 (1967). Like the Due Process Clause, it operates as a constitutional rule of evidence to render admissible on behalf of the accused the material testimony of witnesses in his favor.

The Mississippi rule furthers no governmental interest that would justify its constitutional burdens. It has been called "an intellectual disgrace to our system of evidence." It rests on an untenable distinction between declarations against penal interest and declarations against pecuniary interest. It discriminates against the accused, by forbidding him to use third-person confessions in his favor while permitting the state to use them against him. Finally, it serves no purpose here, where external evidence corroborated the confessions and the declarant himself was present at trial.

II. The accused in a criminal proceeding has a Sixth and Fourteenth Amendment right to cross-examine the witnesses "against" him and impeach them with prior statements. The court below ruled that McDonald did not testify against Chambers, because he did not directly incriminate Chambers. To that extent, it denied Chambers an opportunity to defend himself and arbitrarily abridged his right of confrontation.

The right of confrontation entitles the accused to cross-examine and impeach any person whose adverse testimony has a material bearing on his defense. Chambers based his defense on proof of McDonald's guilt. McDonald was the only other person under suspicion. To that extent, he and Chambers had opposing interests in the outcome of the trial. McDonald became a witness against Chambers when he retracted his sworn confession and denied any part in the murder.

Chambers was barred from confronting McDonald as a witness against him by a local rule that prohibits a party from impeaching his own witness. The rule is a "serious obstruction to the ascertainment of truth" because it permits false testimony to pass unexamined and unimpeached. It rests on the irrational assumption that a party has a real choice about the witnesses he calls. Finally, its purposes are better served by allowing the court to call its own witnesses and subject them to neutral and restrained examination by both parties.

ARGUMENT

I.

THE MISSISSIPPI HEARSAY RULE IS UNCONSTITUTIONAL INSOFAR AS IT PREVENTS WITNESSES FOR THE ACCUSED FROM TESTIFYING THAT SOMEONE ELSE CONFESSED TO THE CRIME

A state rule is unconstitutional whenever it burdens a "fundamental personal right" for less than "compelling" reasons. *Dunn v. Blumstein*, 405 U.S. 330, (1972).[12] The Mississippi hearsay rule prevented Chambers from exercising his rights under the Sixth and Fourteenth Amendments to offer the testimony of witnesses in his favor. The rule is unconstitutional because it interfered with his constitutional rights without furthering a legitimate state interest.

A. Chambers Has a Right to Offer the Exculpatory Testimony of Witnesses in His Favor

The accused in a criminal proceeding has a constitutional right to assert his innocence, and to show that it was not he but another person who committed the crime. He is entitled to know if the other person confessed to the crime, *Brady v. Maryland*, 373 U.S. 83 (1963), and to compel the attendance at trial of witnesses to the confession. *Washington v. Texas*, 388 U.S. 14 (1967).

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[12]The Constitution protects "basic civil rights" (*Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)), against all but the most compelling state interests. See *Kramer v. Union Free District* 395 U.S. 621 (1969) (right to vote); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (right to travel); *Dennis v. United States*, 384 U.S. 855, 873 (1966) (fair trial); *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (freedom to exercise religion); *NAACP v. Button*, 371 U.S. 415, 438 (1963) (freedom of speech); *Bates v. Little Rock*, 361 U.S. 516, 524 (1960) (freedom of association).

The Constitution guarantees the accused more than the mere disclosure and attendance of exculpatory witnesses. It entitles him to offer their testimony on his behalf. To that extent, the due process clause of the Fourteenth Amendment and the compulsory process clause of the Sixth Amendment serve as constitutional rules of evidence. They render admissible on behalf of the accused the material testimony of witnesses in his favor.

1. The Due Process Clause Protects Exculpatory Testimony

The Due Process Clause of the Fourteenth Amendment guarantees the accused a fair trial. It gives him the right to put on evidence in his favor and to offer third-person confessions to exculpate himself. It forbids the states from acting, even in good faith, to deny him an opportunity to defend himself.

Due Process entitles the accused to put on an affirmative defense. *Specht v. Patterson*, 386 U.S. 605, 610 (1967); *Ferguson v. State*, 365 U.S. 570 (1961). It gives him the right to "present evidence" on his behalf, [13] and to "offer testimony" by witnesses in his favor:

> "A person's right to reasonable notice of the charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him [and] to offer testimony . . . ." *In re Oliver*, 333 U.S. 257, 273 (1948).

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[13] "The right to present evidence is, of course essential to the fair hearing required by the Due Process Clause. And, as we have noted above, this right becomes particularly fundamental when the proceeding allegedly results in a finding that a particular individual was guilty of a crime." *Jenkins v. McKeithen*, 395 U.S. 411, 429 (1969) (Opinion of Marshall, J.).

Chambers was denied the right to offer the testimony of three witnesses in his favor. The Mississippi hearsay rule barred them from reciting McDonald's confessions as exculpatory testimony. The rule prevented Chambers from putting on a defense and, thereby, violated the principles of *Brady v. Maryland*, 373 U.S. 83 (1963).

The petitioner in *Brady*, like Chambers, was found guilty of a murder to which someone else had confessed. The state denied him the benefit of the third person confession by concealing its existence. The Court reversed, holding that the state denied the petitioner Due Process when it suppressed a confession that was "material" to his defense:

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87.

Brady concluded that the accused has a constitutional right to know of an exculpatory confession in his favor. The Court assumed that the accused could offer the confession in evidence, because state law so provided. [14] Mississippi, here, has circumvented *Brady* by challenging that underlying assumption. It has denied Chambers the benefit of McDonald's confessions—not by concealing them from him—but by rendering them inadmissible on his behalf.

The effect on the accused is the same whether the state suppresses exculpatory evidence or renders it inadmissible

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[14] Maryland permits third-person confessions to be offered under a hearsay exception for declarations against penal interest. *Brady v. State*, 226 Md. 422, 174 A.2d 167 (1961).

on his behalf. In each case, the state denies him the right to be judged by all available evidence.

A state cannot deny with one hand what Due Process forces it to disclose with the other. The Constitution does not hinge the right of disclosure on arbitrary rules of evidence. If it has any meaning, *Brady* gives the accused not only access to exculpatory testimony but an opportunity to offer it on his behalf.

It makes no difference that Mississippi allegedly applied its hearsay rule in good faith. The Court has now held unanimously that a state violates Due Process—whatever its good faith—when it effectively denies the accused the benefit of "material" evidence in his favor. See *Giglio v. United States*, 405 U.S. 150 (1972). In any event a "good faith" effort by the prosecution to see that justice was done ought to have led them to withhold technically available evidentiary objections.

McDonald's oral confessions were material evidence in favor of Chambers. Chambers based his own innocence on the evidence of McDonald's guilt. McDonald's separate confessions to Hardin, Turner and Carter were important evidence of his guilt. They were old friends and neighbors of his; he had no interest in lying to them. By any analysis, Mississippi violated Due Process by applying its rule to prevent Chambers from offering the confessions in his defense.

2. *The Compulsory Process Clause Protects Exculpatory Testimony*

The Fourteenth Amendment gives additional protection to exculpatory testimony through its incorporation of the Compulsory Process Clause. *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968). The Compulsory Process Clause of the Sixth Amendment gives the accused the right to obtain "witnesses in his favor":

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . . . " U.S. Const. amend. VI.

The right of the accused to obtain witnesses in his favor includes more than the presence of his witnesses at trial. It entitles him to offer their testimony to the jury. The Court summed it up in *Washington v. Texas,* 388 U.S. 14, 17 (1967).

> "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms, the right to present a defense, the right to present the defendant's version of the facts . . . to the jury so it may decide where the truth lies."

The petitioner in *Washington,* like Chambers, was found guilty and sentenced to life imprisonment on a charge of murder. He claimed that he was innocent and accused a codefendant of committing the crime. When he offered the codefendant's confession, however, a Texas witness rule prevented the codefendant from testifying on his behalf. The Court unanimously reversed. It declared the Texas rule unconstitutional because it prevented the accused from offering the confession to exculpate himself.

The principles of *Washington* control the present case. Texas used a witness rule to exclude the codefendant's testimony. Mississippi used a rule of evidence to bar the exculpatory testimony of Chambers' witnesses. Both rules had the same effect. In each case, they denied the accused the benefit of material testimony that someone else committed the crime.

The decision in *Washington* did not rest on the difference between witness rules and evidence rules. The result surely would have been the same if Texas had used a rule of evidence to exclude the codefendant's testi-

mony. The Compulsory Process Clause invalidates witness rules and rules of evidence alike whenever they render the exculpatory testimony of defense witnesses inadmissible: "[The] Sixth Amendment was designed to make the testimony of a defendant's witnesses admissible on his behalf in court . . . . " 388 U.S. at 22.

This case and *Washington* both involve third party confessions. The codefendant in *Washington* was ready to exonerate the accused by reciting his own confession. The witnesses here were ready to exculpate Chambers by recounting McDonald's confessions. In each case, the witnesses offered confessions to exculpate the accused.

The decision in *Washington* did not rest on the identity of the witness. The right of an accused to call witnesses does not depend on whether they recite their own confessions or the confessions of another. It depends on the importance of their testimony to his defense. The accused has a right to put his witnesses on the stand whenever their testimony is "relevant and material to the defense." 388 U.S. at 23.

In any case, the witnesses for Chambers were at least as credible as the codefendant in *Washington*. The codefendant had already confessed once and been convicted of committing the murder himself. He had nothing to lose by repeating his confession to exonerate a friend. Texas sought to exclude his confession for that very reason.

The witnesses for Chambers, on the other hand, had no personal interest in accusing McDonald. The three of them—Hardin, Turner and Carter—were old friends of McDonald. Nonetheless, they were ready to swear in McDonald's very presence that he had confessed to the murder. The independent testimony of each of them corroborated the others and was corroborated, in turn, by the eye-witness who saw McDonald shoot Liberty.

There was little reason to doubt the truth of their testimony.

B. Mississippi Has No Legitimate Interest In Applying Its Hearsay Rule

The Constitution prohibits the states from imposing burdens on fundamental freedoms for any but the most compelling reasons. The Mississippi hearsay rule, which interferes with the right of the accused to offer exculpatory testimony, furthers no legitimate governmental interest. The rule is widely discredited. It applies in an arbitrary fashion. It discriminates against the accused in favor of the prosecution. It seeks to achieve purposes that are better served by less restrictive means.

Mississippi follows the familiar rule for hearsay. It defines hearsay to include all out-of-court statements offered for the truth of the facts asserted, *Handshoe v. Daley*, 211 Miss. 189, 51 So. 2d 230 (1951), and–with numerous recognized exceptions–renders them inadmissible. *Pevey v. Alexander Pool Co.*, 244 Miss. 25, 139 So. 2d 847 (1962). It excludes hearsay on the grounds that statements untested by oath and cross-examination are inherently untrustworthy. *Citizens Bank of Coldwater v. Callicott*, 178 Miss. 747, 174 So. 78 (1937).

Mississippi has created a number of exceptions to its hearsay rule. It permits some hearsay statements to be offered into evidence where circumstances render them trustworthy. Statements that are made instinctively at the happening of an event, and without time for reflection, are admissible on the ground that they are likely to be true. *Houston Contracting v. Atkinson*, 251 Miss. 220, 168 So. 2d 797 (1964).[15]

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[15]Chambers could not take advantage of the *res gestae* exception, because the court limited it to spontaneous statements made at both the time and scene of the shooting (R. 198). McDonald

Declarations against interest, too, are admissible in Mississippi on the assumption that people do not make prejudicial statements about themselves unless they are true.[16] To fall within the exception, however, the statement must be against pecuniary interest. H. T. McElroy, *Mississippi Evidence* § 46 (1955). Declarations against penal interest do not qualify. The "hazard" to the declarant of being punished is considered insufficient to render his statements believable:

> "It is all hearsay; and no exception can be made because the party confessing has put himself in a position of some hazard .... [E]xperience justifies the rejection of the hearsay statements of a male-factor who, having no longer any concern as to his own fate, may wish to serve a pal, a kinsman, or a friend." *Brown v. State*, 99 Miss. 719, 720, 55 So. 961, 962 (1911).

Mississippi treats confessions of guilt, made out of court, like other declarations against penal interest and excludes them. Accordingly, while Mississippi permits the accused to show that someone else committed the crime charged, *Roundtree v. State*, 107 Miss. 166, 65 So. 125 (1914), it prohibits him from offering the other person's confession to do so:

> "It is well settled that testimony going to show confessions and admissions on the part of third persons made out of court is not admissible in

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confessed to Hardin, Turner and Carter some hours after the shooting and after leaving the scene.

[16]See Jefferson, *Declarations Against Interest*, 58 Harv. L. Rev. 1, 63 (1944):

> "The basis for the exception for declarations against interest comes from the disserving quality of the declaration ... which gives the declarations some element of trustworthiness and compensates to some extent for the absence of the oath and opportunity for cross-examination."

exculpation of those on trial for crime. It is mere hearsay, and is excluded for this reason . . . ." *Brown v. State*, 99 Miss. 719, 55 So. 961 (1911).

The court below reaffirmed its exclusionary rule for declarations against penal interest.[17] Justice Rogers, in dissent, would have replaced the rule with the "modern trend" (A. 157) to allow the accused to offer third person confessions to exculpate himself. But the majority, citing *Brown v. State, infra*, upheld the trial court in excluding McDonald's oral confessions:

"[T]he reason for excluding testimony like Carter's and Turner's is because it is hearsay testimony" (A. 155).

1. *The Exclusionary Rule for Declarations Against Penal Interests Is Widely Discredited*

The Mississippi rule that third person confessions are inadmissible on behalf of the accused has been condemned by the most learned students of evidence. John Wigmore writes that "the rule is an intellectual disgrace to our system of evidence." 5 J. Wigmore, *Evidence* §1476 at 284 (3d ed. 1940):

"It is therefore not too late to retrace our steps and to discard this barbarous doctrine which would refuse to let an innocent accused vindicate himself even by producing to the tribunal a perfectly

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[17]The admission of McDonald's written confession did not derogate from the rule. The Mississippi rule provides that hearsay is excluded only if the opposing party objects. *Fieldler v. State*, 235 Miss. 44, 108 So.2d 590 (1959); *Roberts v. Interstate Life*, 232 Miss. 134, 98 So.2d 632 (1957). The state failed to object to McDonald's written confession, so the rule did not apply.

In any case, the respondent conceded in the court below that the trial court had done nothing to change the long-standing Mississippi rule on declarations against penal interest (Brief of Appellee at 16-17).

> authenticated written confession, made on the very gallows by the true culprit . . . . " *Id.* §1477 at 290.

Mr. Justice Holmes, in a famous and forceful dissent, protested the adoption of the rule for the federal courts. *Donnelly v. United States,* 228 U.S. 243, 278 (1913). More recently, the Court itself has criticized the rule. See *United States v. Harris,* 403 U.S. 473, 584 (1971) (Opinion of Burger, C. J.); *id.* at 594 (Harlan, J., dissenting). Rule 804 of the proposed federal Rules of Evidence, presently under the consideration of the Court, would abolish the rule altogether in the federal courts:

> "The refusal of the common law to concede the adequacy of the penal interest was no doubt indefensible in logic, see the dissent by Mr. Justice Holmes in Donnelly v. United States . . . . " Advisory Committee Notes to Rule 804 (second revised draft).

In the meantime, at least half of the federal circuits have already abandoned the rule.[18] A growing number of state courts, too, including California, Illinois and New York, have discarded it as "unsatisfactory and entirely arbitrary."[19] As Justice Rogers noted in the court below,

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[18] *United States v. Seyfried,* 435 F.2d 696 (7th Cir.), *cert. denied* 402 U.S. 912 (1971); *Scolari v. United States*, 406 F.2d 563, 564 (9th Cir.), *cert. denied*, 395 U.S. 981 (1969); *United States v. Dovico*, 261 F. Supp. 862 (S.D.N.Y. 1966), *aff'd*, 380 F.2d 325, 327 n.2 (2d Cir.), *cert. denied*, 389 U.S. 944 (1967); *United States v. Annunziato*, 293 F.2d 373 (2d Cir.) (per Friendly, J.), *cert. denied*, 368 U.S. 919 (1961); *Mason v. United States*, 257 F.2d 359, 360 (10th Cir.), *cert. denied*, 358 U.S. 831 (1958); *Sucher Packing Co. v. Manufacturing Cas. Ins. Co.*, 245 F.2d 513, 521-22 (6th Cir. 1957), *cert. denied*, 355 U.S. 956 (1958).

[19] *Hines v. Virginia*, 136 Va. 728, 743, 117 S.E. 843, 847 (1923). See also, *Deike v. Great Atlantic & Pac. Tea Co.*, 3 Ariz. App. 430, 415 P.2d 145 (1966) (dictum); *People v. Spriggs*, 36 Cal. Rptr. 841, 389 P.2d 377, 60 Cal. 2d 868 (1964) (Traynor, C.J.);

what began as a dissent by Holmes has become virtually a "modern trend". It is a trend that commentators unanimously support.[20]

2. *The Rule Makes an Irrational Distinction Between "Penal" and "Pecuniary" Interests*

The Mississippi rule makes an arbitrary distinction between penal and pecuniary interests. It excludes declarations against penal interest, but admits declarations against pecuniary interest. *Forrest County Coop. Ass'n v. McCaffrey*, 253 Miss. 486, 176 So. 2d 287 (1965). The distinction rests on the assumption that people may lie at the risk of criminal prosecution, but not at the risk of pecuniary loss. *Baldridge v. Stribling*, 101 Miss. 666, 57 So. 658 (1912). That assumption is untenable. As Mr. Justice Holmes suggested in *Donnelly v. United States*, *infra*, the rule defies "experience, logic and common sense":

State v. Larsen, 91 Idaho 42, 415 P.2d 685 (1966); *People v. Lettrich*, 413 Ill. 172, 108 N.E.2d 488 (1952); *Thomas v. Maryland*, 186 Md. 446, 47 A.2d 43 (1946); *Sutter v. Easterly*, 354 Mo. 282, 189 S.W.2d 284 (1945); *State v. Sejuelas*, 94 N.J. Super. 576, 229 A.2d 659 (1967); *Cameron v. State*, 153 Tex. Crim. App. 29, 217 S.W.2d 23 (1949); *People v. Brown*, 26 N.Y.2d 88, 308 N.Y.S.2d 825, 257 N.E.2d 16 (1970).

For States that are divided on the question, see *In re Winineger's Petition*, 337 P.2d 445, 452 (Okla. Crim. App. 1959) (Nix, J., dissenting); *Alexander v. State*, 84 Nev. 737, 449 P.2d 153, 157 (1968) (Thompson, C.J., dissenting); *McClain v. Anderson Free Press*, 232 S.C. 248, 102 S.E.2d 750, 761 (1958) (Legge, J., dissenting).

[20]C. McCormick, Evidence 549-53 (1954); Model Code of Evidence Rule 509(1) (1943); Uniform Rules of Evidence Rule 63(10); Morgan, *Declarations Against Interest*, 5 Vand. L. Rev. 451 (1952); Wright, *Uniform Rules and Hearsay*, 26 U. Cinn. L. Rev. 575 (1957); Orfield, *The Hearsay Rule in Federal Criminal Cases*, 32 Ford. L. Rev. 499, 769 (1964).

"The confession of Joe Dick . . . that he committed the murder for which [Donnelly] was tried, coupled with the circumstances pointed to its truth, would have a very strong tendency to make anyone outside a court of justice believe that Donnelly did not commit the crime . . . . [T]he exception to the hearsay rule in the case of declarations against interest is well known; *no other statement is so much against interest as a confession of murder,* it is far more calculated to convince than dying declarations, which would be let in to hang a man." 228 U.S. at 277-78 (emphasis added).

Mississippi has no legitimate interest in maintaining such a distinction.[21] Having admitted declarations against pecuniary interest, Mississippi cannot arbitrarily exclude declarations against penal interest in a way that interferes with the constitutional right of the accused to offer testimony in his favor.

3. *The Rule Discriminates Against the Accused in Favor of the Prosecution*

The rule on declarations against penal interest not only rests on an irrational distinction, but discriminates against the accused. While it prevents the accused from offering another's confession to exonerate himself, it does not prevent the state from using a third person's confession to convict the accused.

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[21]Virginia was the first of a growing number of states to reject the distinction between penal and pecuniary interests:

"Is a man more likely to speak the truth to his own hurt about a pecuniary obligation or boundary line than about the more serious matter of his responsibility for crime?" *Hines v. Virginia*, 136 Va. 728, 743, 117 S.E. 843, 847 (1923).

See also, *People v. Spriggs*, 36 Cal. Rptr. 841, 389 P.2d 377, 60 Cal. 2d 868 (1964) (Traynor, C.J.).

The out-of-court confession of one conspirator, for example, is admissible against his co-conspirator. *Murphy v. State*, 129 Miss. 634, 92 So. 694 (1922). The confession of one defendant may be introduced against his codefendant. *Henry v. State*, 209 So. 2d 614 (Miss. 1968). The confession of a defendant is admissible against himself. *Sanders v. State*, 237 Miss. 772, 115 So. 2d 145 (1959). In short, Mississippi distrusts confessions only when offered by the accused in his own defense. It welcomes them, and considers them reliable when offered by the prosecution to convict.

Mississippi has no legitimate interest in enforcing against the accused a rule that it waives in favor of the prosecution. Having admitted third-person confessions and out-of-court confessions to convict the accused, it cannot exclude a third-person confession to exonerate the accused.

4. *The Purposes of the Exclusionary Rule Are Better Served by Less Restrictive Means*

The Constitution prohibits a state from enforcing rules that interfere with protected freedoms where "less drastic means" are available.[22] The hearsay exclusionary rule imposes an unnecessary burden on the right of the accused to offer testimony in his favor. Mississippi has a constitutional obligation to achieve its purposes by less restrictive means.

Mississippi excludes third-person confessions for two purposes: to prevent a third person from lying about his

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[22] "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in light of less drastic means for achieving the same purpose." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

own guilt to save his friends; and to prevent witnesses from lying about what the third person has said. In each case, it can achieve those purposes by less restrictive methods.

The state can deter false confessions by requiring corroborative evidence. Rule 804 of the proposed Rules of Evidence for the United States Courts, for example, allows the accused to offer third-person confessions so long as they are supported by external evidence.[23] The requirement of corroboration adequately prevents friends of the accused from incriminating themselves without basis in fact.

A requirement of supporting evidence would have served Mississippi's purposes in this case. Hardin testified that he saw McDonald shoot Officer Liberty. Others saw him at the scene of the crime. He owned a gun like the one used to kill Liberty. William Vaughn saw him carrying a revolver just after the shooting. In short, the record contained abundant evidence to show that McDonald's confessions were more than gratuitous.

Mississippi also has alternatives to prevent witnesses from misrepresenting out-of-court confessions. As with all witnesses, it can test them by oath, by cross-examination, and by penalties for perjury. In addition, it can require that their testimony be corroborated.

In this case, Mississippi had the benefit of abundant testimony to corroborate Hardin, Turner and Carter. For one thing, each of the three witnesses independently supported the testimony of the others. More important, McDonald's sworn confession reinforced their testimony.

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[23]Rule 804 provides as follows:

"A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborated."

They said no more than McDonald admitted in his own written confession. That should have been enough to establish their trustworthiness.

Finally, the presence of McDonald himself at trial was an adequate safeguard against false confessions and false witnesses. Where the declarant is available to testify, he removes the hearsay objections to his prior statements. If he agrees with what the other witnesses say, then he adopts their testimony as his own. If he disagrees, he can challenge their testimony. See 3A J. Wigmore, *Evidence* §1018 (Chadbourn ed. 1970).

The Court in *California v. Green*, 399 U.S. 149 (1970), recognized the safeguards of having the declarant at trial. Where the declarant testifies under oath, and subjects himself to cross-examination, he cures whatever defects may exist in his out-of-court statements.

> "[N]otwithstanding the conventional characterization of an available witness' prior out-of-court statements as hearsay when offered affirmatively for the truth of the matter asserted, this is hearsay only in a technical sense since the witness may be examined at the trial as to the circumstances of memory, opportunity to observe, meaning, and veracity." *California v. Green*, 399 U.S. 149, 188 (Harlan, J., concurring) (citations omitted).

Indeed, *Green* held that the presence of the declarant justified the use of his prior statements against the accused. If his presence is enough to protect the rights of the accused, it is enough to protect the interests of Mississippi.

To conclude, the Mississippi hearsay rule is unduly harsh. The growing trend is to allow the jury to receive and weigh relevant evidence itself.[24] The Mississippi

[24] "[T]he conviction of our time [is] that the truth is more likely to be arrived at by hearing the testimony of all persons of

hearsay rule has the contrary effect of "excluding relevant evidence from state criminal trials." *United States v. Wade*, 388 U.S. 218, 252 (1967) (White, J., dissenting). To that extent, it has the disadvantages of every exclusionary rule. See *Harris v. New York* 401 U.S. 222, 225 (1971); *Bivens v. Six Unknown Agents*, 403 U.S. 388, 411 (1971) (Opinion of Burger, C.J.);*Coolidge v. New Hampshire*, 403 U.S. 443, 510 (1971) (Opinion of Blackmun, J.).

In addition, it had special disadvantage here of excluding material evidence in favor of the accused. Far from protecting Chambers, the exclusionary rule prevented him from offering three separate confessions in his defense. McDonald's spontaneous confessions were precisely the kind of evidence that the jury should have heard before passing upon the defense. See Mr. Justice White dissenting in *Miranda v. Arizona*, 384 U.S. 436, 538 (1966).

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competent understanding who may seem to have knowledge of the facts involved in a case, leaving the credit and weight of such testimony to be determined by the jury or by the court, rather than by rejecting witnesses as incompetent . . ." *Rosen v. United States*, 245 U.S. 467, 471 (1918).

See also, *On Lee v. United States*, 343 U.S. 747, 757 (1952); *Funk v. United States*, 290 U.S. 371, 376 (1933).

II.

A WITNESS FOR THE ACCUSED BECOMES A *WITNESS AGAINST HIM* WHEN HE GIVES MATERIAL TESTIMONY THAT CONTRADICTS THE DEFENSE

The Fourteenth Amendment guarantees the accused the right to be confronted by the witnesses against him. The court below held that Chambers could confront defense witnesses only if they directly incriminated him. It denied him the opportunity to cross-examine and impeach a defense witness whose testimony directly contradicted his case.

Chambers based his claim of innocence on showing that it was not he, but McDonald who killed Officer Liberty. He called McDonald as a witness in order to introduce McDonald's sworn confession. He was not permitted to confront McDonald as an adverse witness and, therefore, examined him only to authenticate the sworn confession.

McDonald retracted his confession under cross-examination by the state and denied responsibility for the death of Officer Liberty. Chambers then renewed his request to confront McDonald as a witness against him, but the trial court ruled that McDonald was not "adverse" to Chambers. It denied that Chambers had a constitutional right to cross-examine McDonald and impeach him with prior oral confessions.

The Mississippi Supreme Court affirmed. It held that Chambers could cross-examine and impeach his own witnesses only if they directly incriminated him ("point the finger at Chambers"):

> "McDonald's testimony was not adverse to appellant; it was merely in McDonald's defense and in

> explanation for his rather unusual confession. *Nowhere did he point the finger at Chambers.* The trial judge did not abuse his discretion when he refused to allow the appellant to examine McDonald as an adverse witness" (A. 154) (emphasis added).

The court below applied a rule that abridges the right of confrontation by narrowly defining witnesses "against" the accused to mean only witnesses who incriminate him. The rule imposes an arbitrary burden on the right of the accused to cross-examine and impeach witnesses who give material testimony against him.

A. Chambers Has A Right To Confront Witnesses Who Testify Against Him

The Fourteenth Amendment guarantees the accused a fair trial, including an opportunity to confront the witnesses against him. *In re Oliver,* 333 U.S. 257 (1948). It gives him the right, generally, to cross-examine the witnesses against him, *Townsend v. Burke,* 334 U.S. 736 (1948), and to impeach their testimony with evidence of his own. *Specht v. Patterson,* 386 U.S. 605, 610 (1967).

The Fourteenth Amendment further incorporates the specific guarantee of the Sixth Amendment that the accused be confronted with "witnesses against him":

> "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . . " U.S. Const. amend. VI.

The Confrontation Clause gives the accused an explicit right to cross-examine witnesses against him, *Smith v. Illinois,* 390 U.S. 129 (1968), and to impeach them with prior inconsistent statements. *Kirby v. United States,* 174 U.S. 47, 55 (1899). The Fourteenth Amendment enforces the Confrontation Clause against the states. *Pointer v. Texas,* 380 U.S. 400 (1965).

The framers, who drafted the confrontation clause with care, did not confine the class of witnesses to be

confronted. They did not limit the class to prosecution witnesses against the accused, but extended it to *all witnesses* against him. Accordingly, the accused has the right to confront any person—whether a prosecution witness, his own witness, or a third person—who testifies against him. *Parker v. Gladden,* 385 U.S. 363, 365 (1966).

The framers also drafted the confrontation clause to protect the accused against every kind of adverse testimony. The protection is not limited to testimony that incriminates the accused, but extends to all testimony against him. It gives the accused "the right to cross-examine . . . witnesses who testif[y] against him." *Brookhart v. Janis,* 384 U.S. 1, 4 (1966).

The right of confrontation is measured, therefore, by the impact on the accused of "any . . . witness whose declarations [the prosecution] seeks to use in a criminal trial." *California v. Green* 399 U.S. 149, 174 (1970) (Harlan, J., concurring). It attaches wherever a witness offers testimony that is "damaging" (*Brookhart v. Janis,* 384 U.S. at 4) or "devastating" (*Dutton v. Evans,* 400 U.S. 74, 87 (1970) (Opinion of Stewart, J.)), or "prejudicial" (*Parker v. Gladden,* 385 U.S. at 365) to the defendant's case. The accused has a right, in effect, to confront any witness whose adverse testimony has a material bearing on his case.

McDonald gave material testimony against Chambers that directly contradicted the defense. He denied responsibility for the murder, offered an alibi for his whereabouts that night, and retracted his sworn confession.

McDonald's testimony on cross-examination was "devastating", *Dutton v. Evans,* 400 U.S. at 87 (Opinion of Stewart, J.), and the state used it directly against Chambers. *California v. Green,* 399 U.S. at 174 (1970) (Harlan, J., concurring). The testimony effectively in-

criminated Chambers, because it frustrated his effort to exculpate himself.

The jury had to weigh McDonald's credibility in deciding which of the two men killed Officer Liberty. If the jury believed that McDonald was guilty, it would exonerate Chambers. Chambers rested his defense, therefore, on being able to discredit McDonald's testimony. To that extent, McDonald became a "witness against" Chambers as soon as he testified for the prosecution.

Chambers had solid grounds for impeaching McDonald through cross-examination. Although McDonald claimed, as an alibi, that he was drinking beer with Berkley Turner at the time Officer Liberty was shot, neither Turner nor the cafe employees saw him there. Moreover, while McDonald denied having a gun on the night of the murder, the deceased Officer's own cousin saw him with a gun just after the shooting.

Chambers also had grounds for impeaching McDonald with his own words. McDonald's confessions to Hardin, Turner and Carter directly contradicted his retraction at trial. Within hours after the murder, he separately confessed to each of them that he killed Officer Liberty. His spontaneous confessions were highly inconsistent with his retraction at trial. They would have undermined his credibility as a witness.

The Confrontation Clause contained precisely the mechanism that Chambers needed for "exposing falsehood and bringing out the truth" (*Pointer v. Texas*, 380 U.S. at 404) about McDonald's testimony. With the benefit of confrontation, Chambers could have impeached McDonald through cross-examination:

> "Our cases construing the [confrontation] clause hold that a primary interest secured by it is the right of cross-examination." *Douglas v. Alabama*, 380 U.S. 415, 418 (1965).

In addition, he could have impeached McDonald with his own prior confessions. What was said in *Harris v. New York*, 401 U.S. 222 (1971), about impeaching the defendant with prior confessions applies with equal force to impeaching his accusers. McDonald had no "right to commit perjury" (*Id.* at 225). When he took the stand, he subjected himself to the "traditional truth-testing devices of the adversary process", including the "risk of confrontation with prior inconsistent utterances" (*Id.* at 225-26). The Confrontation Clause was designed to keep witnesses like McDonald honest.

B. The Mississippi Rule That Prevents An Accused from Impeaching His Own Witnesses Is Arbitrary and Irrational

Chambers was prevented from confronting McDonald as a witness against him because of a Mississippi rule that precludes a party from impeaching his own witnesses. The rule is arbitrary and irrational. It imposes an unwarranted burden on the constitutional right of the accused to confront witnesses against him.

Mississippi follows the rule that a party may not impeach his own witnesses. A party may impeach any opposing witness through cross-examination, *Mask v. State*, 32 Miss. 405 (1856), and prior inconsistent statements. *Wilkinson v. State*, 143 Miss. 324, 108 So. 711 (1926). But he may not use cross-examination and prior statements to impeach his own witnesses. The rule rests on the assumption that when a party calls a witness, he "vouches for his credibility." *Clark v. Lansford*, 191 So. 2d 123 (Miss. 1966).

1. The Rule That Prevents a Party from Impeaching His Own Witnesses Is Irrational

The rule that prevents a party from impeaching his own witnesses has no rational basis. The most distinguished students of evidence have condemned it as a "serious obstruction to the ascertainment of truth." *C. McCormick, Evidence* §38 at 73 (1954). It has "no place" in a rational system of evidence:

> "The fact is that the general prohibition [against impeaching one's own witnesses], if it ever had any basis in reason, has no place in any rational system of investigation in modern society and all attempts to modify or qualify it so as to reach sensible results serve only to demonstrate its irrationality and to increase the uncertainties of litigation." *E. Morgan, Basic Problems of Evidence,* 70-71 (1962).

A growing number of states have already discarded the rule and replaced it with one that permits a party to impeach any witness, including his own.[25] At least half of the federal courts have abandoned it.[26] Rule 607 of

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[25]Alaska R. Civ. Proc. 43(g)(11) (1963); Ark. Stat. § 28-706 (1962); Cal. Evid. Code § 785 (1965); Canal Zone Code tit. 5, § 2824 (1963); Idaho Code Ann. § 9-1207 (1948); Ind. Stat. Ann. § 2-1726 (Burns 1968); Kan. Stat. Ann. § 60-420 (1965); Ky. R. Civ. P. 43.07 (1963); Mass. Gen. Laws Ann. ch. 233, § 23 (1956); Mont. Rev. Codes §93-1901-8 (1964); N.J. Evidence rule 20; N.Y. CPLR § 4514 (1963); Ore. Rev. Stat. § 45.590 (1963); Wyo. Stat. Ann. § 1-143 (1957).

[26]See, *e.g., United States v. Lineberger,* 444 F.2d 122 (4th Cir. 1971); *Ottinger v. Siegfried,* 349 F.2d 647 (10th Cir. 1965); *United States v. Stamps,* 430 F.2d 33, 37 (5th Cir. 1970) (Simpson, J., dissenting); *United States v. Freeman,* 302 F.2d 347 (2d Cir. 1962), *cert. denied,* 375 U.S. 958 (1963); *Johnson v. Baltimore & O. R. Co.,* 208 F.2d 633 (3d Cir. 1953), *cert. denied,* 347 U.S. 943 (1954).

the proposed federal Rules of Evidence rejects it altogether as a rule for the federal courts.[27]

The rule rests on the untenable premise that a party "vouches" for the credibility of his own witnesses. It assumes that a party has complete freedom in calling witnesses in his favor. It is designed to impose a moral obligation on a party to stand by his witnesses and deter him from deliberately harassing them. Both the assumption of the rule and its purposes are misplaced.

First of all, the accused in a criminal proceeding has no "free choice" about calling witnesses in his favor. He calls whatever witnesses he must in order to establish his case:

> "The traditional rule against impeaching one's own witness is. . .based on false premises. A party does not hold out his witnesses as worthy of belief, since he rarely has a free choice in selecting them."[28]

Chambers certainly had no choice about calling McDonald as a witness. He was forced to call McDonald in order to lay a foundation for McDonald's sworn confession. He called McDonald—not because he vouched for everything McDonald might say—but to establish part of his affirmative defense.

Second, a party has no moral obligation to defend the credibility of his witnesses. On the contrary, he had a moral obligation to see that they tell the truth. Where a party, like Chambers, believes that his own witness is committing perjury, he has a duty to expose him. The

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[27]Rule 607 provides as follows:

"The credibility of a witness may be attacked by any party, including the party calling him."

See also, Model Code of Evidence, rule 106(1) (1942); Uniform Rules of Evidence, rule 20 (1953).

[28]Advisory Committee Notes on Rule 607 of the proposed Rules of Evidence for the United States Courts.

Mississippi rule rests on a "primitive notion"[29] that would force Chambers to accept false testimony and permit the prosecution to exploit it.

Third, witnesses have no special reason to fear the party who calls them. Witnesses routinely expect to be cross-examined and impeached by the adverse party. They risk even less from the party who calls them. Indeed, honest witnesses have nothing to risk from the impeachment process. Only unreliable witnesses have reason to fear that they will be discredited.[30]

2. *The Rule Operates in an Arbitrary Manner*

The rule that prohibits a party from impeaching his own witnesses does not operate in a consistent manner. Its own exceptions belie any pretense that the rule may rest on rational grounds.

The rule prohibits a party from using cross-examination and prior statements to impeach his own witnesses. At the same time, however, it permits a party to impeach them with contradictory facts. *Manning v. State,* 188 Miss. 393, 195 So. 319 (1940). If the rule seriously intended a party to "vouch" for his witnesses, it would forbid impeachment altogether.

The rule makes further exceptions. A party may call and impeach the opposing party. *Miss. Code* § 1710 (1942). He may impeach witnesses whom he has a legal

[29] "This primitive notion, resting on no reason whatever, but upon mere tradition, and irrationally forbidding any attempt to question utterances of one's own witness, was obliged to yield its ground before reason and common sense." 3A J. Wigmore, *Evidence* § 898 at 661 (Chadbourn, ed. 1970).

[30] "[The risk of impeachment] cannot appreciably affect an honest and reputable witness. The only person whom it could concern is the disreputable and shifty witness; and what good reason is there why he should not be exposed." *Id.* at § 899, at 664.

obligation to call. *Clark v. Lansford,* 191 So. 2d 123 (Miss. 1966). Moreover, he may impeach witnesses who surprise him with "hostile" testimony by giving either unresponsive answers, *Hall v. State,* 250 Miss. 253, 165 So. 2d 345 (1964), or inconsistent statements. *Dunk v. State,* 84 Miss. 452, 455, 36 So. 609, 610 (1904). Finally, he may impeach witnesses who give "adverse" testimony by directly incriminating him, *Chambers v. Mississippi* (A. 150-58), or by necessarily contradicting his case. *Chism v. State,* 70 Miss. 742, 12 So. 852 (1893).

The exceptions to the rule show how irrational it really is. Considered as a group, they are implicitly designed to avoid the rule altogether by accomodating practically every case in which a party may wish to impeach his own witness. Nonetheless, when cases arise that are not covered by the exceptions, the rule applies in unwonted fashion to prevent a party from confronting the witnesses against him.

Chambers could not claim to impeach McDonald as an opposing party, or as a witness he was legally obliged to call. He could not claim to be "surprised" by McDonald's hostile and inconsistent testimony. And because McDonald did not directly incriminate him ("point the finger at him"), he could not treat McDonald as an adverse witness. In short, despite the myriad exceptions that have arisen to bypass the rule, the rule nonetheless applied to bar Chambers from confronting a material witness against him.

The exceptions to the rule are scarcely better than the rule itself. A party should not have to show that hostile testimony surprised him. It should be enough that the witness may be lying. While McDonald's testimony hardly surprised Chambers, it directly disputed McDonald's own prior statements. The state has an interest in resolving such contradictions through the impeachment process.

Nor should a party have to show that an adverse witness has incriminated him. It should be enough that they have contrary interests, and that the witness gives material testimony that directly undermines the defense.[31] In this case, McDonald was the only other person suspected of killing Officer Liberty. To that extent, he and Chambers had opposing interests in the outcome of the trial. By denying that he killed Liberty, moreover, McDonald directly repudiated the basis on which Chambers rested his case.

3. *The Purposes of the Rule Are Better Served by Less Restrictive Methods*

The Mississippi rule has two purposes: to prevent a party from harassing his own witness; and to eliminate the "moral" dilemma of allowing a party to call a witness and then discredit him. For each purpose, however, the rule is unnecessarily harsh. The state can serve its objectives without imposing burdens on the right of the accused to confront witnesses against him. In light of the alternatives, Mississippi cannot justify the effect of its rule.

The courts of Mississippi have inherent power to prevent a party from harassing his own witnesses. They routinely regulate the manner in which witnesses are examined. See *Smith v. Illinois*, 390 U.S. 129, 133 (1968) (White, J., concurring). They are fully capable of protecting witnesses from overzealous cross-examination by the adverse party. *Alford v. United States*, 282 U.S.

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[31] The federal rule treats adverse witnesses with greater latitude than Mississippi. The party in a federal court may impeach his own witnesses whenever they give "prejudicial" testimony that has a "material" bearing on his defense. *Hickory v. United States*, 151 U.S. 303, 309 (1894). See also Rule 43(a) of the Federal Rules of Civil Procedure, as construed in *Rossano v. Blue Plate Foods, Inc.*, 314 F.2d 174, 178 (5th Cir.), *cert. denied*, 375 U.S. 866 (1963).

687, 694 (1931). Similarly, they can protect a witness from malicious cross-examination by his own party, without forbidding cross-examination altogether.

Mississippi also has alternatives to solve whatever moral dilemma may arise when a party first calls a witness and then discredits him. Where neither party wishes to call a witness, the court can call him as a witness of the court and subject him to neutral examination and impeachment by both parties:

> "The rule which permits the trial court to call and examine witnesses. . .is quite a reasonable one and is well recognized. If judiciously exercised, it is productive of no harm; and many times, by extending to attorneys the right to cross-examine and impeach on material matters, it prevents a failure of justice." *Litsinger v. United States*, 44 F.2d 45, 47 (7th Cir. 1930).

A number of states have already solved Mississippi's dilemma by providing for witnesses of the court.[32] The federal courts follow the same practice.[33] It satisfies the purposes of the Mississippi rule while avoiding constitutional defects.

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[32] *Kissic v. State*, 266 Ala. 71, 94 So. 2d 202 (1957); *People v. Donovan*, 272 Cal. App. 2d 413, 77 Cal. Rptr. 285 (1969); *Daugherty v. State*, 154 Fla. 308, 17 So. 2d 290 (1944); *People v. Williams*, 22 Ill. 2d 498, 177 N.E.2d 100 (1961), *cert. denied*, 369 U.S. 806 (1962); *State v. Hines*, 270 Minn. 30, 133 N.W.2d 371 (1964); *Portales v. Bell*, 72 N.M. 80, 380 P.2d 826 (1963); *Commonwealth v. Burns*, 409 Pa. 619, 187 A.2d 552 (1963); *Montesi v. State*, 220 Tenn. 354, 417 S.W.2d 554 (1967); *Stoots v. Commonwealth*, 192 Va. 857, 66 S.E.2d 866 (1951); *State v. Loveless*, 140 W. Va. 875, 87 S.E.2d 273 (1955).

[33] *Estella-Ortega v. United States*, 423 F.2d 509 (9th Cir. 1970); *Smith v. United States*, 331 F.2d 265 (8th Cir. 1964), *cert. denied*, 379 U.S. 824 (1964); *United States v. Browne*, 313 F.2d 197 (2d Cir. 1963). See also Rule 614(a) of the proposed Rules of Evidence for the United States Courts.

To conclude, Mississippi has no legitimate interest—even as a matter of state law—in preventing parties from impeaching their own witnesses. It may choose to use the rule to regulate the examination of witnesses, but the Sixth and Fourteenth Amendments preclude it from using the rule in a criminal case to prevent the accused from confronting the witnesses against him.

CONCLUSION

The Mississippi rules at issue here applied to deny Chambers a fair trial. The hearsay rule barred him from offering material confessions to exculpate himself. The party-witness rule prevented him from impeaching material testimony against him. Taken individually and together, the rules frustrated his constitutional right to put on a defense.

The Constitution guarantees to every accused an opportunity to defend himself. The Due Process Clause of the Fourteenth Amendment stands as a procedural guardian to ensure the accused "a right to his day in court". *In re Oliver*, 333 U.S. 257, 273 (1948). It demands, as a minimum, that he enjoy the combined opportunity to offer evidence in his favor and to impeach the evidence against him:

> "Due Process, in other words, requires that he be present with counsel, have an opportunity to be heard, be confronted with witnesses against him, have the right to cross-examine, and to offer evidence of his own." *Specht v. Patterson*, 386 U.S. 605, 610 (1967).

The Due Process Clause further incorporates the protections of the Sixth Amendment. The Sixth Amendment was framed to embody in a single article the basic incidents of a fair trial.[34] Besides trial by jury, indict-

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[34] J. Goebel, *History of the Supreme Court of the United States: Antecedents and Beginnings to 1801*, at 445 (1971).

ment by grand jury, and assistance of counsel, it protects the presentation of evidence. Specifically, the Compulsory Process Clause gives the accused the right to offer testimony in his favor, and the Confrontation Clause gives him the right to impeach testimony against him. Together, they "constitutionalize the right to a defense as we know it." *California v. Green,* 399 U.S. at 176 (Harlan, J., concurring).

The "right to a defense" includes an opportunity for the accused to offer whatever material testimony favors his case, and to impeach whatever material testimony prejudices his defense. In this case, Mississippi rules had just the opposite effect. They not only barred Chambers from putting on his own case, but forced him to accept McDonald's case for the State.

The Mississippi rules deprived Chambers of his day in court. While the rules may be valid on their face, they are unconstitutional as applied in his case. The judgment of the Mississippi Supreme Court should be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5908

LEON CHAMBERS,
Petitioner,

vs.

STATE OF MISSISSIPPI,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

BRIEF FOR THE RESPONDENT

OPINION BELOW

The Opinion of the Supreme Court of Mississippi is reported at 252 So.2d 217 (Miss. 1971).

JURISDICTION

Certiorari was granted by this Court on March 20, 1972. Chambers was released on bail on February 14, 1972. 30 L.Ed.2d 773.

STATEMENT OF FACTS

Leon Chambers was indicted in the Circuit Court of Wilkinson County for the murder of Aaron Liberty. A change of venue was granted and Chambers was tried and convicted in the Circuit Court of Amite County, Mississippi.

For his conviction Chambers was sentenced to serve life in the State Penitentiary.

On the night of June 14, 1969, in the Town of Woodville, Mississippi, Aaron Liberty, a black part-time policeman, was shot in the back and side four times. Woodville Policemen Forman and Liberty had gone to Hayes' Cafe to arrest C. C. Jackson, against whom an affidavit had been made and an arrest warrant issued. A crowd of 20 or 30 blacks prevented the officers from arresting Jackson. Deputy Sheriff Gordon Geter, Waldo Welch and Herman Anthony responded to a call for help by Forman.

At the time of the shooting Geter was in the middle of the street facing Liberty, who had his back to the alley. A volley of five or six shots was fired from the alley, four of which hit Liberty in the back and side. Liberty turned toward Welch and told him that he (Liberty) had been shot. Welch told him to "kill him", whereupon Liberty turned toward the alley and fired two shots down the alley. Liberty appeared to take deliberate aim on his second shot. The second shot hit Chambers in the head and neck. Liberty collapsed and was taken to the hospital where he was found to be dead on arrival.

About five months later, on November 10, 1969, Gable McDonald was taken to the law office of Mullins and Smith in Natchez, Mississippi, by Reverend Stokes, a black preacher, and in the presence of Attorneys Mullins, Smith and West, Attorneys for Chambers, and in response to questions propounded by them, McDonald, an illiterate black, confessed that he shot Officer Liberty with a .22 caliber revolver. The statement was typed up, read by West to McDonald, and then signed by mark and sworn to by McDonald.

McDonald was arrested and placed in jail where he remained until a preliminary hearing before a Justice of the Peace on December 9, 1969. McDonald completely repudiated his confession. He testified that he was told by Stokes that if he would confess to the killing of Liberty that the town would be sued and that he (McDonald) would receive one third of the money.

At Chambers' trial McDonald was called as a defense witness. He was allowed to testify about his confession, Reverend Stokes' promise to him and his subsequent repudiation of that confession. He testified that he did not kill Liberty and had nothing whatsoever to do with the killing. The court overruled Chambers' motion to examine McDonald as an adverse witness.

Deputy Sheriff Geter testified for the State that he was facing Liberty at the time he was shot, and that he saw Chambers shoot Liberty in the back and he saw Chambers with the gun in his hand.

Deputy Sheriff Welch testified that he saw Chambers break his right hand down, and immediately thereafter heard five or six shots fired, but he did not actually see the gun in Chambers' hand.

Sammy Hardin testified for the defense that he saw Gable McDonald shoot Liberty.

Albert Carter, called as a witness for the defendant, testified that on the day after the shooting Gable McDonald came to his house. After the jury had been excluded, Carter testified that later on, on that Sunday, he went to McDonald's house, and that McDonald stated that he had shot Liberty.

On appeal, the Supreme Court of Mississippi held that the trial court's action of excluding the testimony of Carter

and Turner was proper in that it was hearsay. The Supreme Court held that the case went to the jury on conflicting evidence and that the evidence supported the verdict.

From that decision Chambers petitioned this Court for certiorari which was granted.

QUESTIONS PRESENTED

Did the trial court deny Chambers of his Sixth Amendment right of confrontation and Fourteenth Amendment right to due process in excluding the hearsay testimony of two witnesses that they had heard a third party (McDonald) confess that he shot Liberty when in fact McDonald took the witness stand and admitted that he had previously confessed?

Did the trial court deny Chambers of his Sixth Amendment right of confrontation by ruling that McDonald was not an adverse witness in that he did not accuse Chambers of the crime, that Chambers was not surprised by McDonald's testimony, particularly in view of the fact that Chambers was allowed to question McDonald extensively and was not denied the right to ask any question?

ARGUMENT

A.

The Trial Court Properly Excluded Hearsay Evidence.

At the trial below Leon Chambers called Gable McDonald as a defense witness. McDonald testifed extensively as to his out-of-court confession, his subsequent repudiation of that confession and his actions and conduct on the night of the murder of Aaron Liberty.

Chambers then called Albert Carter and Berkley Turner as defense witnesses. Carter and Turner were allowed to testify out of the presence of the jury that Gable McDonald had confessed to them that he had shot Aaron Liberty. The trial court refused to allow this testimony to go to the jury, and Chambers now contends that action resulted in a denial of the right of confrontation.

The exclusion of Carter and Turner was in accord with the decisions of this Court. In *Donnelly* v. *United States*, 228 U.S. 243, 33 S.Ct. 449, 57 L.Ed. 820 (1913), this Court held that it was well settled by decisions of this Court and the state courts that evidence of confessions of third parties, made out of court, and exonerating the accused should be excluded. The basis of the decision was that the statements were mere hearsay.

Chambers contends that the rule is not in accord with the modern trend. However, as recent as *United States* v. *Harris*, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971), this Court recognized *Donnelly* as possibly requiring the exclusion of out-of-court declarations against interest made by one other than the defendant. Justice Harlan, in a dissenting opinion, joined by Justices Black, Brennan and Marshall, stated that declarations against penal interest do not fall within the hearsay exceptions. The criticism of *Donnelly* was thus recognized but not accepted.

The United States Court of Appeals for the District of Columbia refused to overrule *Donnelly* in *United States* v. *Alexander*, 430 F.2d 904 (CADC 1970). In *Scolari* v. *United States*, 406 F.2d 563 (CA9 1969), the Ninth Circuit found that the "great weight of authority" is against the admission of declarations against penal interest by parties other than the defendant.

Chambers contends that half the circuits have already abandoned the rule; however, a reading of cases cited by Chambers in no way confirms the contention.[1]

At the time of Chambers' trial the rule in Mississippi was identical to the rule of *Donnelly* in that testimony going to show out-of-court confessions and admissions on the part of third persons is hearsay and is inadmissible in exculpation of those on trial for a crime. *Brown* v. *State*, 99 Miss. 719, 55 So. 961 (1911). In expressing the State interest in and the reasoning behind its ruling the Supreme Court of Mississippi stated:

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1. In *United States* v. *Seyfried*, 435 F.2d 696 (CA7 1971), cert. denied 402 U.S. 912, 91 S.Ct. 1393, 28 L.Ed.2d 654 (1971) the Court did not reach the question as to whether *Donnelly* would be followed, and there was no allegation that compliance with *Donnelly* would reach a constitutional issue. In *Scolari* v. *United States*, 406 F.2d 563 (CA9 1969), cert. denied 395 U.S. 981, 89 S.Ct. 2140, 23 L.Ed.2d 769 (1969), the court found that *Donnelly* was the greatest weight of authority, and followed it even though it had been criticized. In *United States* v. *Dovico*, 261 F.Supp. 862 (S.D.N.Y. 1966), aff'd 380 F.2d 325, cert. denied 389 U.S. 944, 88 S.Ct. 308, 19 L.Ed.2d 302 (1967), the Court of Appeals held the case was not proper for a determination as to whether a declaration against penal interest should be an exception to the hearsay rule. In *United States* v. *Annunziato*, 293 F.2d 373 (CA 1961), cert. denied 368 U.S. 919, 82 S.Ct. 240, 7 L.Ed.2d 134 (1961), no reference was made to *Donnelly* and it was recognized that statements against interest do not relate to statements only against penal interest." In *Mason* v. *United States*, 257 F.2d 359 (CA10 1958), cert. denied 358 U.S. 831, 79 S.Ct. 52, 3 L.Ed.2d 69 (1958), the court found no declaration against penal interest and did not decide on the *Donnelly* rule. In *Sucher Packing Company* v. *Manufacturing Casualty Insurance Company*, 245 F.2d 513 (CA6 1957), cert. denied 355 U.S. 956, 78 S.Ct. 541, 2 L.Ed.2d 531 (1958), a civil case, the Court noted that *Donnelly* might not be applicable only to criminal cases and did not hold the third party declaration against penal interest admissible.

> All one defendant would have to do would be to admit that his guilty accomplice was innocent and that he himself had perpetrated the crime, absent himself so as to enable the party on his trial to have the benefit of his admission, and, after his acquittal, appear, demand his trial, and prove by the evidence of the acquitted party that he was in fact the guilty person. *Brown* v. *State*, 99 Miss. 719, 727, 55 So. 961 (1911).

The commentators agree that the majority rule is that an admission or confession of a stranger that he committed the offense with which the defendant is charged should be excluded.[2] To change the rule would work a travesty on justice.[3]

The trial court properly refused to allow Carter and Turner to testify that they had heard Gable McDonald confess to the murder of Aaron Liberty as their statements were mere hearsay and McDonald was not under oath at the time he made such statements, if, in fact, he did.

Further, it must be remembered that Gable McDonald was called as a defense witness and admitted that he had previously confessed to the murder of Aaron Liberty. That alone was sufficient to exclude the testimony of Carter

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2. McCormick, Law of Evidence, p. 549 (1954); Jones on Evidence, Section 296 (1958); 5 Wigmore, Evidence, Section 1476; Wharton's Criminal Evidence, Section 253 (12th ed.).

3. If the rule were changed, A could be charged with the crime; B could tell C and D that he committed the crime; B could go into hiding and at A's trial C and D would testify as to B's admission of guilt; A could be acquitted and B would return to stand trial; B could then provide several witnesses to testify as to his whereabouts at the time of the crime. The testimony of those witnesses along with A's statement that he really committed the crime could result in B's acquittal. A would be barred from further prosecution because of the protection against double jeopardy. No one could be convicted of perjury as A did not testify at his first trial, B did not lie under oath, and C and D were truthful in their testimony.

and Turner as the availability of the declarant is an additional ground for excluding his extrajudicial confession. *Jones* v. *United States*, 400 F.2d 134 (CA9 1968); *Smith* v. *United States*, 106 F.2d 726 (CA4 1939); *United States* v. *Mulholland*, 50 F. 413 (CADC).

Even in the absence of the rationale of *Donnelly* the trial court properly excluded the hearsay testimony of Carter and Turner in that the proper predicate for their testimony was not laid. When the proper foundation is laid, Mississippi admits testimony regarding prior inconsistent statements of a witness. *Bonelli* v. *Bowen*, 70 Miss. 142, 149, 11 So. 791 (1892). In laying the proper predicate the witness must be asked if he made a prior inconsistent statement and then he must be given a chance to explain the inconsistencies. *McCormick*, Law of Evidence, Section 37 (1954).

Chambers did not question McDonald as to whether he had confessed to Carter and Turner and in the absence of such a foundation the hearsay testimony was properly excluded.

McDonald testified extensively as to his out-of-court confession, his repudiation of that confession, and the circumstances surrounding it. He did not deny having made the confession. The testimony of Carter and Turner was properly excluded as hearsay; likewise the proper predicate was not laid for their testimony and McDonald was never given the opportunity to admit or deny the making of such statements. If the statements were made they were unsworn and pure hearsay. McDonald, the declarant, was available and did testify. Further, the testimony of Carter and Turner would have been only cumulative in that McDonald freely admitted that he had previously confessed to the crime.

B.

The Right of Confrontation Is Limited to Witnesses Against the Accused.

The right of confrontation, as expressed by the Sixth Amendment and made applicable to the State by way of the Fourteenth Amendment reads: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

By the language of the Constitution the "confrontation" provision refers not to all witnesses but to "witnesses against." This limitation of the right was noted by the United States Court of Appeals for the Sixth Circuit in *United States* v. *Beasley,* 438 F.2d 1279 (CA6 1971), wherein it was held that a witness is not a witness "against" the accused when his testimony is not "accusatorial", and in the absence of accusatorial testimony the right of confrontation does not apply. That the right of confrontation applies to witnesses "against" an accused rather than "for" the accused was noted by the United States Court of Appeals for the Second Circuit in *United States* v. *Bujese,* 434 F.2d 46 (CA2 1970).

It becomes apparent in the decisions of this Court that the right of confrontation is not absolute. In *California* v. *Green,* 399 U.S. 149, 155-156, 90 S.Ct. 1930, ..., 26 L.Ed.2d 489, 495, 496 (1970), this Court stated that "merely because evidence is admitted in violation of a long-established hearsay rule does not lead to the automatic conclusion that confrontation rights have been denied." As pointed out by the concurring opinion of Chief Justice Burger, historically: "The confrontation clause was meant to constitutionalize a barrier against flagrant abuses, trial by anonymous accusers, and absentee witnesses." 399 U.S. at 179, 26 L.Ed.2d at 509.

In *Dutton* v. *Evans*, 400 U.S. 74, 91 S.Ct. 210, 27 L.Ed.2d 213 (1970), Evans, Truett and Williams were charged with murder. Truett, the principal prosecution witness at the trial, detailed the circumstances of the murder. Shaw, one of twenty prosecution witnesses, testified that he and Williams had been fellow prisoners. Shaw testified that Williams was carried to court for arraignment. Upon returning, Williams was asked "how he made out in court". Shaw testified that Williams responded that if it had not been for Evans "we wouldn't be in this now." This Court held that in view of the circumstances the accomplice's statement was not "crucial" or "devastating", and the admission of the testimony did not deny the right to confront witnesses against the accused.

Chambers claims he was limited to direct examination of Gable McDonald and the trial court's failure in refusing to hold McDonald to be an "adverse" witness denied his right of confrontation. However, McDonald did not accuse Chambers of the murder for which he was being tried, his testimony was not accusational, and he did not point the finger of guilt at Chambers. Chambers was in no way denied a right of confrontation. As McDonald was called as a defense witness the holding of the Supreme Court of Tennessee in *State* v. *Bomer*, 179 Tenn. 67, 162 S.W. 2d 515, 520 (1942), is applicable:

> The constitutional provision that the accused hath the right to meet the witness face to face 'has no application to witnesses summoned in behalf of a defendant.'

Chambers called McDonald as a defense witness and now alleges that the Mississippi evidentiary rule limiting him to direct examination is arbitrary and unreasonable. The rule in Mississippi is that a party, including the prosecution, may cross-examine its own witnesses after showing

that the evidence as given has taken him by surprise and that the witness is hostile. *Hooks* v. *State*, 197 So.2d 238 (Miss. 1967).

Chambers had examined McDonald under oath at a preliminary hearing and the testimony elicited at trial was the same as that given at the preliminary hearing. McDonald's testimony was not surprising to Chambers; likewise, it was not hostile as it was not accusatorial, nor was McDonald unwilling to answer Chambers' questions fully and completely.

The Mississippi rule as to cross-examining a party's own witness is identical to that approved by the federal courts. In *Culwell* v. *United States*, 194 F.2d 808 (CA5 1952), the general rule was stated as follows:

> It is the established rule that impeachment of one's own witness may be resorted to where his testimony has surprised the party offering him. However, the impeaching matter is to be limited to the point of surprise and even where this is a real surprise it is not proper to permit the impeachment testimony to go beyond the only purpose of which it is admissible, i.e., the removal of damage the surprise has caused. 'In no event may the fact that a witness has made contradictory statements be used as it in effect was here, as a basis for completely discarding the rules of evidence against hearsay and ex parte statements, and, as impeachment, opening the floodgates of prejudicial and damaging hearsay.'

In *Bateman* v. *U. S.*, 212 F.2d 61 (9th Cir. 1954), the Court held that the party introducing a witness should not be allowed to impeach its witness where the witness's testimony did not surprise nor prejudice the party by whom he was introduced. In the case at bar Chambers was not

surprised by McDonald's testimony and could not have been prejudiced by it.

The defense may not call a witness who has not testified merely to attempt to discredit him in the course of eliciting adverse testimony. *Beasley* v. *United States*, 218 F.2d 366 (CADC 1954), 94 U.S. App. D.C. 406, cert. denied, 349 U.S. 907, 75 S.Ct. 584, 99 L.Ed. 1243

In any event, the technical description of the manner of questioning would seem unimportant. McDonald appeared as a defense witness and answered all questions asked. Chambers had full opportunity to confront McDonald and no attempt at impeachment was denied. Chambers was not refused the opportunity to ask any questions. The fact that the questioning was technically direct examination was sufficient to justify the confrontation clause of the Sixth Amendment. In *United States* v. *Griffin*, 434 F.2d 978 (CA9 1970), an accusatorial witness was called by the defense and answered all questions asked. The United States Court of Appeals for the Ninth Circuit held that there was full opportunity to "confront", even though the confrontation was by direct not cross-examination.

Chambers was not denied the opportunity to ask McDonald any question. Chambers was free to inquire into any matter and he cannot predicate error on his failure to avail himself of an opportunity. *United States* v. *Peterson*, 435 F.2d 192 (CA7 1970). In *Peterson*, a witness named Bartemio testified as to Rachel's out-of-court admissions as to her and Peterson's guilt. Peterson had a right to confront Rachel. Peterson called Rachel as his witness and the Court held that the right of confrontation was afforded. The right of confrontation was afforded even though Rachel was called as a defense witness and there was no cross-examination.

CONCLUSION

Leon Chambers was afforded every constitutional right. He was allowed to call McDonald as a witness and McDonald freely admitted having previously confessed to the crime. The jury heard the testimony. The jury was not allowed to hear the testimony of Carter and Turner that they had heard McDonald confess. That occurrence was pure hearsay and the declarant was not "unavailable" as he had previously testified. Chambers was not limited in his examination of McDonald.

Respondent submits no right of confrontation was denied and if there were any errors they were harmless beyond a reasonable doubt. *Chapman* v. *California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

Respectfully submitted,

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CERTIFICATE

I, Timmie Hancock, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, five copies of the foregoing Brief of Respondent to Honorable Ramsey Clark and Honorable Peter Westen, Attorneys at Law, 1775 K Street, N.W., Washington, D. C. 20006, Counsel for Petitioner.

This the 1st day of August, A. D., 1972.

Timmie Hancock
Special Assistant Attorney General

Supreme Court, U. S.
FILED
OCT 11 1972
MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-5908

LEON CHAMBERS,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

Chambers contends that state hearsay and party-witness rules worked to deny him a fair trial in violation of the Sixth and Fourteenth Amendments. He does not challenge the rules on their face. Rather, he makes the narrow contention that the rules are unconstitutional *as applied to his case* because they prevented him from putting on a defense.

Mississippi does not address the constitutional questions presented. It relies upon the validity of foreign rules on their face, instead of discussing the validity of its own rules as applied. It argues about facets of state law that have no bearing on Chambers' constitutional claim. And it confuses the fundamental difference between his use of McDonald's oral confessions to exculpate himself, and his use of them to impeach McDonald as witness against him.

I.

CHAMBERS HAS A CONSTITUTIONAL RIGHT TO OFFER McDONALD'S CONFESSIONS TO EXCULPATE HIMSELF.

Chambers has a right, as a matter of Compulsory Process and Due Process, to offer McDonald's confessions to exculpate himself. The Mississippi hearsay rule is unconstitutional as applied, because the constitutional interest in receiving exculpatory testimony overcomes whatever nonconstitutional interests underlie the rule.

A. The Federal Hearsay Rule Does Not Support the Decision Below.

Mississippi can derive no comfort from the federal hearsay rule of *Donnelly v. United States*, 228 U.S. 243 (1913). The Court in *Donnelly* did not consider the constitutional right of the accused to offer third-person confessions to exculpate himself. Rather, it exercised its jurisdiction over federal criminal trials to establish a federal hearsay rule for declarations against penal interest. The rule obviously has no effect on matters of proof in state trials.

Donnelly is distinguishable, moreover, even on its facts. There was some question in *Donnelly* whether the

declarant had actually confessed. In this case, on the other hand, McDonald's three oral confessions were independently corroborated both by one another and by his written confession. Again, even assuming the declarant in *Donnelly* actually confessed, the fact that he died before trial precluded him from being cross-examined about the truth of his confession. Here McDonald was not only present at trial but thoroughly examined by the prosecution about the truth of his sworn confession.

Finally, Mississippi cannot invoke a general federal rule to support a particular application of its own rule. Both rules are presumably valid on their face. The question is whether Mississippi may constitutionally apply its rule in the circumstances of this case. Mississippi has avoided that question by mistaken reference to other rules in other circumstances.

Donnelly's real significance for this case, if any, lies elsewhere. Far from supporting the Mississippi rule, the federal experience with *Donnelly* serves only to undermine its rationale. The Court of Appeals for the Second Circuit, for example, finds the rule "indefensible," *United States v. Annunziato*, 293 F.2d 373, 378, (2d Cir. 1961) (Friendly, J.) *cert. denied*, 368 U.S. 919 (1961), while the Ninth Circuit casts explicit doubt on its continued vitality.[1] The Court itself had occasion recently to question the rule:

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[1] "[There is] the question as to how old, or how badly reasoned, or both, a Supreme Court decision on a question of evidence must be before we are to feel free to refuse to follow it." *Scolari v. United States*, 406 F.2d 563, 564 (9th Cir. 1969), *cert. denied*, 395 U.S. 981 (1969).

> "Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these [declarations against penal interest]. People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility. . . ." *United States v. Harris*, 403 U.S. 573, 583 (1971) (Opinion of Burger, C.J.).

In short, the tenuous interests underlying the rule are probably not enough to save it as a general rule of evidence. But they are certainly "not . . . sufficient to overrride the defendant's right" to exculpate himself in this case. See *Brooks v. Tennessee*, 406 U.S. 605, 611 (1972).

B. McDonald's Presence at Trial Satisfied Mississippi's Hearsay Interests.

Third-party confessions are inadmissible under Mississippi rules, whether or not the declarant is present to testify. At the same time, Mississippi now refers to McDonald's presence as a reason for excluding his confessions. To that extent, it relies on a rule in some states that declarations against penal interest, which are otherwise admissible, become inadmissible where the declarant is present as a witness.

Mississippi has inverted the real significance of McDonald's presence at trial. Far from supporting the rule below, his presence rendered the rule unnecessary in this case. Where a constitutional interest conflicts with a state interest, the Court must ordinarily decide which interest prevails. See *Brooks v. Tennessee*, 406 U.S. 605 (1972). But McDonald's presence here provided an alternative means for avoiding such a conflict. For

reasons set forth in *California v. Green*, 399 U.S. 149 (1970), his presence enabled Mississippi to receive his oral confessions while simultaneously satisfying its state hearsay interests.

The prosecution in *Green* used an out-of-court statement to convict the accused under a state rule that permitted hearsay to be received in the presence of the declarant. The Court sustained the rule against constitutional attack. It held that the presence of the declarant eliminates the constitutional objections to his unsworn and uncross-examined statements. The declarant either accepts the out-of-court statement and incorporates it as his own direct testimony, or he denies the statement and becomes available for rebuttal. In either case, the trier of fact has a chance to place the declarant under oath and to observe his demeanor. For those reasons, "the dangers of hearsay are largely non-existent where the witness testifies at trial." *California v. Green*, 399 U.S. at 155.

Because "hearsay rules and the Confrontation Clause are generally designed to protect similar values" (*ibid*), what was true in *Green* is *a fortiori* here. Since the declarant's presence satisfied Mr. Green's constitutional objection to the use of incriminating hearsay, McDonald's presence would have satisfied Mississippi's objection to the use of exculpatory hearsay. It was not "necessary" to deny Chambers the liberty of offering the confession on his behalf.[2] Mississippi could have eliminated whatever

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[2] In considering the right to vote, the Court held last Term that states may not interfere with fundamental liberties unless their laws are "reasonably necessary to the accomplishment of legitimate state objectives":

"Because the Texas filing-fee scheme has a real and appreciable impact on the exercise of the franchise . . . we conclude . . .

hearsay dangers accompanied McDonald's oral confessions by the simple alternative of calling him to the stand.

It is irrelevant that some states prefer to exclude third-party confessions where the declarant can testify in person. Their reasons have nothing to do with the inherent reliability of the confessions. They would agree that the declarant's presence strengthens his out-of-court statements.[3] They simply see no "need," as a matter of state law, to accept the second-hand statements of a witness who can testify in court.

There is no question here of determining state needs. The accused has an overriding need of his own to exculpate himself with whatever evidence is available. His needs do not depend on state preferences, but are protected by the constitutional rights of Due Process and Compulsory Process. The states cannot suppress material confessions in favor of the accused by arbitrarily denying the need for them.

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that the laws must be 'closely scrutinized' and found *reasonably necessary* to the accomplishment of legitimate state objectives in order to pass constitutional muster.

* * * * *

"[U]nder the standard of review we consider applicable in this case, *there must be a showing of necessity*." *Bullock v. Carter*, 405 U.S. 134, 144, 147 (1972) (emphasis added).

[3] "If [the declarant] is available, the credibility of his extrajudicial statements is not lessened by the fact. Furthermore, the opportunity for cross-examination would eliminate the basic objection to the hearsay character of the evidence." *Spriggs v. California*, 60 Cal. 2d 868, 875, 36 Cal. Rptr. 841, 845, 389 P.2d 377, 381 (1964) (Traynor, C.J.).

C. McDonald's Oral Confessions Would Have Influenced the Jury.

Mississippi recognizes the probative force of McDonald's oral confessions. Indeed, it went so far as to repeatedly deny Chambers the benefit of offering them on his behalf. It now insists, however, that the error of excluding the confessions was harmless. It refers to the fact that McDonald's sworn confession was read to the jury and contends that his oral confessions were simply "cumulative" of that exculpatory evidence already in the record.

Mississippi overstates its case. The error at trial consisted not of admitting tainted evidence but of excluding exculpatory evidence. With errors of exculpatory evidence, the reviewing court examines the record as if the evidence had been properly received[4] and decides whether that evidence would have affected the verdict. It is reversible error to exclude exculpatory evidence that "may have had an effect on the outcome of the trial," *Napue v. Illinois*, 360 U.S. 264, 272 (1959), or that "could . . . in any reasonable likelihood have affected the judgment of the jury." *Id.* at 271. *Giglio v. United States*, 405 U.S. 150, 154 (1972). Judge Friendly has formulated the test as follows:

> "The test, however, is . . . whether . . . there was a significant chance that this added item [of evidence] . . . could have induced a reasonable

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[4]With errors of tainted evidence, on the other hand, the reviewing court treats the record as if the evidence had been properly excluded and decides whether the remaining evidence of guilt supports the conviction. *Harrington v. California*, 395 U.S. 250 (1969). See also *Milton v. Wainwright*, ____ U.S. ____, ____ (June 22, 1972) (slip op. 7).

doubt in the minds of enough jurors to avoid a conviction." *United States v. Miller*, 411 F.2d 825, 832 (2d Cir. 1969) (footnote omitted).

McDonald's oral confessions were more persuasive than his sworn statement and would have independently influenced the jury. The prosecution succeeded, after all, in discrediting the sworn confession. It emphasized that McDonald made the statement almost four months after the shooting, that he delivered it in the presence of lawyers for Chambers, and that, being illiterate, he had to sign it with an "X." Furthermore, McDonald himself helped to repudiate his written confession. He testified that the statement was false, that the words were put into his mouth, and that he signed it in hope of pecuniary gain.

McDonald's oral confessions, on the other hand, were unimpeachable. He made his oral statements spontaneously within hours of the shooting. He delivered them—not to strangers—but to friends and neighbors who witnessed the shooting. He told the same thing to each of them independently. In short, the oral confessions did more than duplicate his sworn confession. They made it irresistible. They were compelling evidence of Chambers' innocence and would "in any reasonable likelihood have affected the judgment of the jury." *Napue v. Illinois*, 360 U.S. 264, 271 (1959).

II.

CHAMBERS HAS A CONSTITUTIONAL RIGHT TO CONFRONT McDONALD AS A WITNESS AGAINST HIM.

McDonald became a *witness against Chambers*, under the Confrontation Clause of the Sixth and Due Process clause of the Fourteenth Amendments, when he denied the facts upon which Chambers rested his defense. Yet the Mississippi party-witness rule barred Chambers from cross-examining and impeaching his own witness. The rule as applied in this case is unconstitutional because it denied Chambers the right to confront a witness whose testimony prejudiced his defense.

A. Chambers Was Denied the Right to Cross-Examine McDonald.

Mississippi repeatedly implies that Chambers did examine McDonald about his reasons for signing the sworn confession, about his subsequent repudiation of the confession, and about his actions on the night of the murder.[5] That is simply not the case. Chambers did not examine McDonald in any form about those facts. He questioned McDonald on direct examination only about

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[5] "At Chamber's trial McDonald was called as a defense witness. He was allowed to testify about his confession, Reverend Stokes' promise to him and his subsequent repudiation of that confession. He testified that he did not kill Liberty and had nothing whatsoever to do with the killing" (Resp. Br. 3).

"At the trial below Leon Chambers called Gable McDonald as a defense witness. McDonald testified extensively as to his out-of-court confession, his subsequent repudiation of that confession and his actions and conduct on the night of the murder of Aaron Liberty" (Resp. Br. 5).

the authenticity of the sworn confession. It was the *prosecution alone* that questioned McDonald about the truth of his confession and his actions on the night of the murder. When Chambers moved to cross-examine McDonald about his damaging testimony to the prosecution, his request was flatly denied.

Mississippi also suggests, in various ways, that "Chambers was allowed to question McDonald extensively and was not denied the right to ask any question" (Resp. Br. 4).[6] Again, Mississippi misleads the Court. Chambers did not put questions to McDonald on cross-examination because he had been explicitly prohibited from doing so. He made repeated attempts to cross-examine McDonald. He filed a formal motion at the very start of the trial to examine McDonald as an adverse witness, but the trial court refused to rule on it until McDonald had testified (A. 61). After McDonald testified to the prosecution, the defense pressed its motion again:

> "I want to ask the Court, request that we be permitted—it's very obvious and apparent that this witness is an adverse and unfriendly witness, and in accordance with our motion that has been previously filed in this Court, we ask that this witness be declared to be an adverse witness, a hostile witness and permit us to propound questions to him as if on cross-examination" (A. 121).

This time the court flatly denied the request (A. 121). It did not wait for Chambers to ask specific questions. It

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[6] Mississippi states in its brief that "McDonald appeared as a defense witness and answered all questions asked. . . . Chambers was not refused the opportunity to ask any question" (Resp. Br. 12); and that "Chambers was not limited in his examination of McDonald" (Resp. Br. 13).

simply ruled his questions out altogether. Chambers can hardly be faulted for complying with the court's order.

B. Chambers Was Also Denied the Right to Confront McDonald with a Prior Confession.

Having been denied the right to impeach McDonald through cross-examination, Chambers tried to impeach him with McDonald's prior confession to Albert Carter ("Carter confession"). Again, the trial court denied him the right to confront McDonald as a witness against him. Mississippi now confuses the constitutional effect of the denial by making the untenable assumption that McDonald's oral confessions were all part of Chambers' affirmative defense, and that Chambers failed to perfect his right to use them.

1. *Chambers Offered the Carter Confession in Order To Impeach McDonald as a Witness Against Him.*

Mississippi confuses the different purposes for which Chambers offered McDonald's oral confessions. Chambers offered McDonald's confession to Sam Hardin ("Hardin confession") and Berkley Turner ("Turner confession") as hearsay—that is, for the truth of the confessions—in order to exculpate himself. Those confessions formed part of his affirmative defense under the Compulsory Process and Due Process Clauses of the Sixth and Fourteenth Amendments. They had nothing to do with his right of confrontation. Mississippi's assumption otherwise (Resp. Br. 4) is an oversight.

In contrast to the Hardin and Turner confessions, Chambers offered the Carter confession as part of his

right of confrontation and to impeach McDonald's testimony to the prosecution. He called Carter as a witness after McDonald repudiated his sworn confession and denied shooting Officer Liberty. He tendered the Carter confession—not for its truth—but as the prior inconsistent statement of a *witness against him* under the Confrontation Clause and Due Process Clause of the Sixth and Fourteenth Amendments. Mississippi is simply mistaken in treating the Carter confession as hearsay (Resp. Br. 8).

2. *Chambers Was Precluded from Laying a Foundation for the Carter Confession.*

Mississippi ignores the constitutional effect of denying Chambers the right to confront McDonald with the Carter confession. Instead, it argues as a matter of state law that Chambers failed to lay a proper foundation for the prior inconsistent confession. It argues that Chambers should have given McDonald a chance to explain the Carter confession before impeaching him, McDonald, with it.

The argument is misdirected.[7] For one thing, it was implicitly rejected by the court below. The Mississippi Supreme Court was urged to find that Chambers had failed to lay a proper foundation for the impeaching confession (Brief for Appellee 15-16). But it refused to

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[7]It should be noted—despite Mississippi's confusion to the contrary (Resp. Br. 8)—that the matter of laying a proper foundation has nothing to do with the Hardin and Turner confessions. The rule requires a party to lay a foundation for a *prior inconsistent statement*. It does not require a party to lay a foundation for hearsay statements that are offered for their truth.

do so. Instead, it decided as a substantive matter that Chambers had no right to impeach his own witness. This Court should not now decide a question of state procedure that the state court below considered and implicitly denied.

Furthermore, the Mississippi Supreme Court had good reason to reject the argument. Chambers did not lay a foundation for the prior inconsistent statement because he was not allowed to. He had no cause to impeach McDonald at all until McDonald was examined by the prosecution. It was only then that McDonald contradicted his prior confession to Carter by denying that he shot Officer Liberty. At that point, however, Chambers could no longer put foundation questions to McDonald about the Carter confession, because he had just been denied the right to cross-examine McDonald about his role in the shooting. To lay a foundation after the prosecution examined McDonald would have required Chambers to ask questions in the nature of cross-examination—which is precisely what the trial court forbad. Justice Rogers explained it in his dissenting opinion:

> "The defendant requested the right to cross-examine the witness as to his explanation of the confession. The court refused to permit the defendant to cross-examine the witness upon the ground that he was hostile. The defendant was thus prevented from laying a predicate to impeach the witness" (A. 156).

C. Whether or not Chambers Was "Surprised" by McDonald's Testimony Is Irrelevant.

Mississippi raises another issue of state law that was not decided below and that has no bearing on the constitutional question before the Court. It asserts that Chambers was not "surprised" by McDonald's adverse

testimony, and that the absence of surprise, under the state party-witness rule, is another reason to preclude Chambers from impeaching his own witness. Neither assertion finds support in the opinion below. But even if they are accepted, they only dramatize that the Mississippi rule did apply to deny Chambers the right to confront a witness against him. They have no bearing on whether the rule, so applied, is constitutional.

There is some question, under Mississippi law, whether surprise has anything to do with the right of a party to impeach "adverse" witnesses of his own.[8] But even assuming that it does, the courts below refused to make any findings concerning surprise. The trial court decided that Chambers could not impeach McDonald by finding that McDonald was not "adverse" to him. It did not rule on the question of surprise. Likewise, although the Mississippi Supreme Court was urged to find that Chambers was not surprised by McDonald's testimony (Appellee's Br. at 15-16), it refused to do so. Instead, it affirmed on the ground that McDonald was not an adverse witness. As far as this Court is concerned, the matter of surprise was considered below and dismissed.

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[8]It is not clear that a party must be "surprised" under the Mississippi rule before he can impeach an "adverse" witness of his own. The rule distinguishes between adverse witnesses and hostile witnesses. See *Faust v. State*, 221 Miss. 668, 74 So. 2d 817 (1954). A "hostile" witness is one whose testimony proves unresponsive, *Hall v. State*, 250 Miss. 253, 165 So. 2d 345 (1964), or inconsistent with his prior statements. *Dunk v. State*, 84 Miss. 452, 455, 36 So. 609, 610 (1904). An "adverse" witness, on the other hand, is one whose testimony directly incriminates ("points the finger at") the accused. While a party must show surprise before impeaching hostile witnesses of his own, *Hooks v. State*, ____ *Miss.* ____ 197 So. 2d 238 (1967), the same may not be true of adverse witnesses.

Mississippi cannot ask the Court to decide a question of state law that its own courts so assiduously avoided.

In any event, it makes no difference whether the Mississippi rule requires surprise or whether Chambers was surprised within the meaning of the rule. Those are matters of state law to be considered in deciding whether the rule should have been applied. But in fact the rule was applied. The only question here is whether that application of the rule is constitutional. The constitutional right of the accused to confront the witnesses against him is not affected by state findings of "surprise."

D. The Federal Witness Rule Does Not Support the Decision Below.

Mississippi ignores the constitutionality of its own rule as applied, and invokes the federal rule that a party may not generally impeach his own witnesses. The federal rule has no effect, of course, on state proceedings. But even if the federal rule governed it would not have produced the result below. To the contrary, it would have afforded Chambers precisely what he sought—an opportunity to confront McDonald as a witness against him.

The federal rule affords the accused considerable scope in confronting his own witnesses. While the accused in Mississippi may not impeach his own witnesses, unless they directly incriminate him, the accused in a federal proceeding may impeach his own witnesses wherever their testimony is "prejudicial" to his defense. *Hickory v. United States*, 151 U.S. 303, 309 (1894). He may impeach any witness of his own who "affirmatively damages" his case, *Bushaw v. United States*, 353 F.2d 477 (9th Cir. 1965), *cert. denied*, 384 U.S. 921 (1966) or who "tends to aid the case of the adverse party."

Randazzo v. United States, 300 F. 794, 797 (8th Cir. 1924). Although McDonald did not directly incriminate Chambers, he denied the very facts upon which Chambers rested his defense. To that extent, he prejudiced and damaged the case for Chambers within the meaning of the federal rule.[9]

CONCLUSION

For the reasons stated above and in the brief for the petitioner, the judgment of the Supreme Court of Mississippi should be reversed.

Respectfully submitted,

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Under Law

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[9]It should be noted that some consider even the federal rule to be unduly restrictive. The Proposed Federal Rules of Evidence for United States Courts and Magistrates gives the accused an unbridled right to impeach his own witnesses:

> "The credibility of a witness may be attacked by any party, including the party calling him." Rule 607 (second revised draft).

By that standard, Chambers would not even have to show that McDonald's testimony prejudiced his defense.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CHAMBERS *v.* MISSISSIPPI

CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

No. 71–5908. Argued November 15, 1972—Decided January 21, 1973

After petitioner was arrested for murder, another person (McDonald) made, but later repudiated, a written confession. On three separate occasions, each time to a different friend, McDonald orally admitted the killing. Petitioner was convicted of the murder in a trial that he claimed was lacking in due process because petitioner was not allowed to (1) cross-examine McDonald (whom petitioner had called as a witness when the State failed to do so), since under Mississippi's common-law "voucher" rule a party may not impeach his own witness, or (2) introduce the testimony of the three persons to whom McDonald had confessed, the trial court having ruled their testimony inadmissible as hearsay. The Mississippi Supreme Court affirmed. *Held:* Under the facts and circumstances of this case petitioner was denied a fair trial, in violation of the Due Process Clause of the Fourteenth Amendment. Pp. 10–18.

(a) The application of the "voucher" rule prevented petitioner through cross-examination of McDonald from exploring the circumstances of McDonald's three prior oral confessions and challenging his renunciation of the written confession, and thus deprived petitioner of the right to contradict testimony that was clearly "adverse." Pp. 10–13.

(b) The trial court erred in excluding McDonald's hearsay statements which were critical to petitioner's defense and which bore substantial assurances of trustworthiness, including that each was made spontaneously to a close acquaintance, that each was corroborated by other evidence in the case, that each was in a real sense against McDonald's interest, and that McDonald was present and available for cross-examination by the State. Pp. 13–18.

252 So. 2d 217, reversed and remanded.

Syllabus

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, BRENNAN, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. WHITE, J., filed a concurring opinion. REHNQUIST, J., filed a dissenting opinion.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 71–5908

Leon Chambers, Petitioner, *v.* State of Mississippi. | On Writ of Certiorari to the Supreme Court of Mississippi.

[February 21, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

Petitioner, Leon Chambers, was tried by a jury in a Mississippi trial court and convicted of murdering a policeman. The jury assessed punishment at life imprisonment and the Mississippi Supreme Court affirmed, one justice dissenting. *Chambers* v. *Mississippi*, 252 So. 2d 217 (1971). Pending disposition of his application for certiorari to this Court, petitioner was granted bail by order of the Circuit Justice dated February 1, 1972. Two weeks later, on the State's request for reconsideration, that order was reaffirmed. 405 U. S. 1205 (1972). Subsequently the petition for certiorari was granted, 405 U. S. 987 (1972), to consider whether petitioner's trial was conducted in accord with principles of due process under the Fourteenth Amendment. We conclude that it was not.

I

The events that led to petitioner's prosecution for murder occurred in the small town of Woodville in southern Mississippi. On Saturday evening, June 14, 1969, two Woodville policemen, James Forman and Aaron "Sonny" Liberty, entered a local bar and pool hall to execute a warrant for the arrest of a youth named C. C. Jackson. Jackson resisted and a hostile crowd

of some 50 or 60 persons gathered. The officers' first attempt to handcuff Jackson was frustrated when 20 or 25 men in the crowd intervened and wrestled him free. Forman then radioed for assistance and Liberty removed his riot gun, a 12-gauge sawed-off shotgun, from the car. Three deputy sheriffs arrived shortly thereafter and the officers again attempted to make their arrest. Once more the officers were attacked by the onlookers and during the commotion five or six pistol shots were fired. Forman was looking in a different direction when the shooting began, but immediately saw that Liberty had been shot several times in the back. Before Liberty died he turned around and fired both barrels of his riot gun into an alley in the area from which the shots appeared to have come. The first shot was wild and high and scattered the crowd standing at the face of the alley. Liberty appeared, however, to take more deliberate aim before the second shot and hit one of the men in the crowd in the back of the head and neck as he ran down the alley. That man was Leon Chambers.

Officer Forman could not see from his vantage point who shot Liberty or whether Liberty's shots hit anyone. One of the deputy sheriffs testified at trial that he was standing several feet from Liberty and that he saw Chambers shoot him. Another deputy sheriff stated that, although he could not see whether Chambers had a gun in his hand, he did see Chambers "break his arm down" shortly before the shots were fired. The officers who saw Chambers fall testified that they thought he was dead but they made no effort at that time either to examine him or to search for the murder weapon. Instead they attended to Liberty, who was placed in the police car and taken to the hospital where he was declared dead on arrival. A subsequent autopsy showed that he had been hit with four bullets from a .22-caliber revolver.

Shortly after the shooting, three of Chambers' friends discovered that he was not yet dead. James Williams,[1] Berkley Turner, and Gable McDonald loaded him into a car and transported him to the same hospital. Later that night, when the county sheriff discovered that Chambers was still alive, a guard was placed outside his room. Chambers was subsequently charged with Liberty's murder. He pleaded not guilty and has asserted his innocence throughout.

The story of Leon Chambers is intertwined with the story of another man, Gable McDonald. McDonald, a lifelong resident of Woodville, was in the crowd on the evening of Liberty's death. Sometime shortly after that day he left his wife in Woodville and moved to Louisiana and found a job at a sugar mill. In November of that same year he returned to Woodville when his wife informed him that an acquaintance of his, known as Reverend Stokes, wanted to see him. Stokes owned a gas station in Natchez, Mississippi, several miles north of Woodville, and upon his return McDonald went to see him. After talking to Stokes, McDonald agreed to make a statement to Chambers' attorneys, who maintained offices in Natchez. Two days later he appeared at the attorneys' offices and gave a sworn confession that he shot Officer Liberty. He also stated that he had already told a friend of his, James Williams, that he shot Liberty. He said that he used his own pistol, a nine-shot .22-caliber revolver, which he had discarded shortly after the shooting. In response to questions from Chambers' attorneys, McDonald affirmed that his confession was voluntary and that no one had compelled him to come to them. Once the confession had been transcribed,

[1] James Williams was indicted along with Chambers. The State, however, failed to introduce any evidence at trial implicating Williams in the shooting. At the conclusion of the State's case-in-chief the trial court granted a directed verdict in his favor.

signed and witnessed, McDonald was turned over to the local police authorities and was placed in jail.

One month later, at a preliminary hearing, McDonald repudiated his prior sworn confession. He testified that Stokes had persuaded him to confess that he shot Liberty. He claimed that Stokes had promised that he would not go to jail and that he would share in the proceeds of a lawsuit that Chambers would bring against the town of Woodville. On examination by his own attorney and on cross-examination by the State, McDonald swore that he had not been on the scene when Liberty was shot but had been down the street drinking beer in a cafe with a friend, Berkley Turner. When he and Turner heard the shooting he testified that they walked up the street and found Chambers lying in the alley. He, Turner and Williams took Chambers to the hospital. McDonald further testified at the preliminary hearing that he did not know what had happened, that there was no discussion about the shooting either going to or coming back from the hospital, and that it was not until the next day that he learned that Chambers had been felled by a blast from Liberty's riot gun. In addition, McDonald stated that while he once owned a .22-caliber pistol he had lost it many months before the shooting and did not own or possess a weapon at that time. The local justice of the peace accepted McDonald's repudiation, released him from custody, and the local authorities undertook no further investigation of his possible involvement.

Chambers' case came on for trial in October of the next year.[2] At trial he endeavored to develop two

[2] Upon Chambers' motion, a change of venue was granted and the trial was held in Amite County, to the east of Woodville. The change of trial setting was in response to petitioner's claim that, because of adverse publicity and the hostile attitude of the police and sheriff's staffs in Woodville, he could not obtain a fair and impartial trial there.

grounds of defense. He first attempted to show that he did not shoot Liberty. Only one officer testified that he actually saw Chambers fire the shots. Although three officers saw Liberty shoot Chambers and testified that they assumed he was shooting his attacker, none of them examined Chambers to see whether he was still alive or whether he possessed a gun. Indeed, no weapon was ever recovered from the scene and there was no proof that Chambers had ever owned a .22-caliber pistol. One witness testified that he was standing in the street near where Liberty was shot, that he was looking at Chambers when the shooting began, and that he was sure that Chambers did not fire the shots.

Petitioner's second defense was that Gable McDonald had shot Officer Liberty He was only partially successful, however, in his efforts to bring before the jury the testimony supporting this defense. Sam Hardin, a lifelong friend of McDonald's, testified that he saw McDonald shoot Liberty. A second witness, one of Liberty's cousins, testified that he saw McDonald immediately after the shooting with a pistol in his hand. In addition to the testimony of these two witnesses, Chambers endeavored to show the jury that McDonald had repeatedly confessed to the crime. Chambers attempted to prove that McDonald had admitted responsibility for the murder on four separate occasions, once when he gave the sworn statement to Chambers' counsel and three other times prior to that occasion in private conversations with friends.

In large measure, he was thwarted in his attempt to present this portion of his defense by the strict application of certain Mississippi rules of evidence. Chambers asserts in this Court, as he did unsuccessfully in his motion for new trial and on appeal to the State Supreme Court, that the application of these evidentiary rules rendered his trial fundamentally unfair and deprived him

of due process of law.[3] It is necessary, therefore, to examine carefully the rulings made during the trial.

II

Chambers filed a pretrial motion requesting the court to order McDonald to appear. Chambers also sought

[3] On the record in this case, despite the State Supreme Court's failure to address the constitutional issue, it is clear that Chambers' asserted denial of due process is properly before us. He objected during trial to each of the court's rulings. As to the confrontation claim, petitioner asserted, both before and during trial, his right to treat McDonald as an adverse witness. His motion for new trial, filed after the jury's verdict, listed as error the trial court's refusal to permit cross-examination of McDonald and the exclusion of evidence corroborative of McDonald's guilt. The motion concluded that the trial "was not in accord with fundamental fairness guaranteed by the Fourteenth Amendment of the Constitution." Chambers reasserted those claims on appeal to the State Supreme Court. After the affirmance of his conviction by that court, Chambers filed a petition for rehearing addressed almost entirely to the claim that his trial had not been conducted in a manner consistent with traditional notions of due process. The State Supreme Court raised no question that Chambers' claims were not properly asserted, and no claim has been made by the State—in its response to the petition for certiorari, in its brief on the merits, or at oral argument—that the questions are not properly reviewable by this Court. See *Street* v. *New York*, 394 U. S. 576, 581–585 (1969); *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 67–68 (1928).

Unlike *Henry* v. *Mississippi*, 379 U. S. 443 (1965), this case does not involve the state procedural requirement of contemporaneous objection to the admission of evidence. Petitioner's contention, asserted before the trial court on motion for new trial and subsequently before the Mississippi Supreme Court, is that he was denied "fundamental fairness guaranteed by the Fourteenth Amendment" as a result of several evidentiary rulings. His claim, the substance of which we accept in this opinion, rests on the cumulative effect of those rulings in frustrating his efforts to develop an exculpatory defense. Although he objected to each ruling individually, petitioner's constitutional claim—based as it is on the cumulative impact of the rulings—could not have been raised and ruled upon prior to the conclusion of Chambers' evidentiary presentation. Since

a ruling at that time that, if the State chose not to call McDonald itself, he be allowed to call him as an adverse witness. Attached to the motion were copies of McDonald's sworn confession and of the transcript of his preliminary hearing at which he repudiated that confession. The trial court granted the motion requiring McDonald to appear but reserved ruling on the adverse witness motion. At trial, after the State failed to put McDonald on the stand, Chambers called McDonald, laid a predicate for the introduction of his sworn out-of-court confession, had it admitted into evidence, and read it to the jury. The State, upon cross-examination, elicited from McDonald the fact that he had rejected his prior confession. McDonald further testified, as he had at the preliminary hearing, that he did not shoot Liberty, and that he confessed to the crime only on the promise of Reverend Stokes that he would not go to jail and would share in a sizable tort recovery from the town. He also retold his own story of his actions on the evening of the shooting, including his visit to the cafe down the street, his absence from the scene during the critical period, and his subsequent trip to the hospital with Chambers.

At the conclusion of the State's cross-examination, Chambers renewed his motion to examine McDonald as an adverse witness. The trial court denied the motion, stating: "He may be hostile, but he is not adverse in the sense of the word, so your request will be overruled." On appeal, the State Supreme Court upheld the trial court's ruling, finding that "McDonald's testimony was

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the State has not asserted any independent state procedural ground as a basis for not reaching the merits of petitioner's constitutional claim, we have no occasion to decide whether—if such a ground exists—its imposition in this case would serve any "legitimate state interest." *Id.*, at 447. Under these circumstances, we cannot doubt the propriety of our exercise of jurisdiction.

not adverse to appellant" because "[n]owhere did he point the finger at Chambers." 252 So. 2d., at 220.

Defeated in his attempt to challenge directly McDonald's renunciation of his prior confession, Chambers sought to introduce the testimony of the three witnesses to whom McDonald had admitted that he shot the officer. The first of these, Sam Hardin, would have testified that, on the night of the shooting, he spent the late evening hours with McDonald at a friend's house after their return from the hospital and that, while driving McDonald home later that night, McDonald stated that he shot Liberty. The State objected to the admission of this testimony on the ground that it was hearsay. The trial court sustained the objection.[4]

Berkley Turner, the friend with whom McDonald said he was drinking beer when the shooting occurred, was then called to testify. In the jury's presence, and without objection, he testified that he had not been in the cafe that Saturday and had not had any beers with McDonald. The jury was then excused. In the absence of the jury, Turner recounted his conversations with McDonald while they were riding with James Williams to take Chambers to the hospital. When asked whether McDonald said anything regarding the shooting of Liberty, Turner testified that McDonald told him that he "shot him." Turner further stated that one week later, when he met McDonald at a friend's house, McDonald reminded him of their prior conversation and urged Turner not to "mess him up." Petitioner argued to the court that, especially where there was other proof in the case that was corroborative of these out-of-court statements, Turner's testimony as to McDonald's self-

[4] Hardin's testimony, unlike the testimony of the other two men who stated that McDonald had confessed to them, was actually given in the jury's presence. After the State's objection to Hardin's account of McDonald's statement was sustained, the trial court ordered the jury to disregard it.

incriminating remarks should have been admitted as an exception to the hearsay rule. Again, the trial court sustained the State's objection.

The third witness, Albert Carter, was McDonald's neighbor. They had been friends for about 25 years. Although Carter had not been in Woodville on the evening of the shooting, he stated that he learned about it the next morning from McDonald. That same day he and McDonald walked out to a well near McDonald's house and there McDonald told him that he was the one who shot Officer Liberty. Carter testified that McDonald also told him that he had disposed of the .22-caliber revolver later that night. He further testified that several weeks after the shooting he accompanied McDonald to Natchez where McDonald purchased another .22 pistol to replace the one he had discarded.[5] The jury was not allowed to hear Carter's testimony. Chambers urged that these statements were admissible, the State objected, and the court sustained the objection.[6] On appeal, the State Supreme Court approved the lower court's exclusion of these witnesses' testimony on hearsay grounds. 252 So. 2d, at 220.

In sum, then, this was Chambers' predicament. As a consequence of the combination of Mississippi's "party

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[5] A gun dealer from Natchez testified that McDonald had made two purchases. The witness' business records indicated that McDonald purchased a nine-shot .22-caliber revolver about a year prior to the murder. He purchased a different style .22 three weeks after Liberty's death.

[6] It is not entirely clear whether the trial court's ruling was premised on the same hearsay rationale underlying the exclusion of the other testimony. In this instance the State argued that Carter's testimony was an impermissible attempt by petitioner to impeach a witness (McDonald) who was not adverse to him. The trial court did not state why it was excluding the evidence but the State Supreme Court indicated that it was excluded as hearsay. 252 So. 2d, at 220.

witness" or "voucher" rule and its hearsay rule, he was unable either to cross-examine McDonald or to present witnesses in his own behalf who would have discredited McDonald's repudiation and demonstrated his complicity. Chambers had, however, chipped away at the fringes of McDonald's story by introducing admissible testimony from other sources indicating that he had not been seen in the cafe where he says he was when the shooting started, that he had not been having beer with Turner, and that he possessed a .22 pistol at the time of the crime. But all that remained from McDonald's own testimony was a single written confession countered by an arguably acceptable renunciation. Chambers' defense was far less persuasive than it might have been had he been given an opportunity to subject McDonald's statements to cross-examination or had the other confessions been admitted.

III

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. Mr. Justice Black, writing for the Court in *In re Oliver*, 333 U. S. 257, 273 (1948), identified these rights as among the minimum essentials of a fair trial:

> "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic to our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel."

See also *Morrissey* v. *Brewer*, 408 U. S. 471, 488–489 (1972); *Jenkins* v. *McKeithen*, 395 U. S. 411, 428–429

(1969); *Specht* v. *Patterson*, 386 U. S. 605, 610 (1967). Both of these elements of a fair trial are implicated in the present case.

A

Chambers was denied an opportunity to subject McDonald's damning repudiation and alibi to cross-examination. He was not allowed to test the witness' recollection, to probe into the details of his alibi, or to "sift" his conscience so that the jury might judge for itself whether McDonald's testimony was worthy of belief. *Mattox* v. *United States*, 156 U. S. 237, 242–243 (1895). The right of cross-examination is more than a desirable rule of trial procedure. It is implicit in the constitutional right of confrontation, and helps assure the "accuracy of the truth-determining process." *Dutton* v. *Evans*, 400 U. S. 74, 89 (1970); *Bruton* v. *United States*, 391 U. S. 123, 135–137 (1968). It is, indeed, "an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." *Pointer* v. *Texas*, 380 U. S. 400, 405 (1965). Of course, the right to confront and to cross-examine is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process. *E. g., Mancusi* v. *Stubbs*, 408 U. S. 204 (1972). But its denial or significant diminution calls into question the ultimate "integrity of the fact-finding process" and requires that the competing interest be closely examined. *Berger* v. *California*, 393 U. S. 314, 315 (1969).

In this case, petitioner's request to cross-examine McDonald was denied on the basis of a Mississippi common law rule that a party may not impeach his own witness. The rule rests on the presumption—without regard to the circumstances of the particular case—that a party who calls a witness "vouches for his credibility." *Clark* v. *Lansford*, 191 So. 2d 123, 125 (Miss. 1966). Although the historical origins of the "voucher" rule

are uncertain, it appears to be a remnant of primitive English trial practice in which "oath-takers" or "compurgators" were called to stand behind a particular party's position in any controversy. Their assertions were strictly partisan and, quite unlike witnesses in criminal trials today, their role bore little relation to the impartial ascertainment of the facts.[7]

Whatever validity the "voucher" rule may have once enjoyed, and apart from whatever usefulness it retains today in the civil trial process, it bears little present relationship to the realities of the criminal process.[8] It might have been logical for the early common law to require a party to vouch for the credibility of witnesses he brought before the jury to affirm his veracity. Having selected them especially for that purpose, the party might reasonably be expected to stand firmly behind their testimony. But in modern criminal trials defendants are rarely able to select their witnesses: they must take them where they find them. Moreover, as applied in this case, the "voucher" rule's[9] impact was doubly harmful to Chambers' efforts to develop his defense. Not only was he precluded from cross-examining McDonald, but, as the State conceded at oral argument,[10] he was also restricted in the scope of his direct examination by the rule's corollary requirement that the party calling the

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[7] 3A J. Wigmore, Evidence § 896, at 658–660 (Chadbourn ed. 1970); C. McCormick, Evidence § 38, at 75–78 (2d ed. 1972).

[8] The "voucher" rule has been condemned as archaic, irrational, and potentially destructive of the truth gathering process. C. McCormick, *supra* n. 7; E. Morgan, Basic Problems of Evidence 70–71 (1962); 3A J. Wigmore, *supra* n. 7, § 898, at 661.

[9] The "voucher" rule has been rejected altogether by the newly proposed Federal Rules of Evidence, Rule 607, Rules of Evidence for the United States Courts and Magistrates (approved Nov. 20, 1972 and transmitted to Congress to become effective July 1, 1973). 409 U. S. — (1972).

[10] Tr. of Oral Arg., at 35–37.

witness is bound by anything he might say. He was, therefore, effectively prevented from exploring the circumstances of McDonald's three prior oral confessions and from challenging the renunciation of the written confession.

In this Court Mississippi has not sought to defend the rule or explain its underlying rationale. Nor has it contended that its rule should override the accused's right of confrontation. Instead, it argues that there is no incompatability between the rule and Chambers' rights because no right of confrontation exists unless the testifying witness is "adverse" to the accused. The State's brief asserts that the "right of confrontation is limited to witnesses *against* the accused." [11] Relying on the trial court's determination that McDonald was not "adverse," and on the State Supreme Court's holding that McDonald "did not point the finger at Chambers," [12] the State contends that Chambers' constitutional right was not involved.

The argument that McDonald's testimony was not "adverse" to, or "against," Chambers is not convincing. The State's proof at trial excluded the theory that more than one person participated in the shooting of Liberty. To the extent that McDonald's sworn confession tended to incriminate him, it tended also to exculpate Chambers.[13] And, in the circumstances of this case, McDonald's retraction inculpated Chambers to the same extent that it exculpated McDonald. It can hardly be disputed that McDonald's testimony was in fact seriously adverse to Chambers. The availability of the right to confront and to cross-examine those who give damaging testimony against the accused has never been held to depend on whether the witness was initially put

[11] Respondent's Brief, at 9 (emphasis supplied).

[12] 252 So. 2d, at 220.

[13] See *Donnelly* v. *United States*, 228 U. S. 243, 272 (1913).

on the stand by the accused or by the State. We reject the notion that a right of such substance in the criminal process may be governed by that technicality or by any narrow and unrealistic definition of the word "against." The "voucher" rule, as applied in this case, plainly interfered with Chambers' right to defend against the State's charges.

B

We need not decide, however, whether this error alone would occasion reversal since Chambers' claimed denial of due process rests on the ultimate impact of that error when viewed in conjunction with the trial court's refusal to permit him to call other witnesses. The trial court refused to allow him to introduce the testimony of Hardin, Turner and Carter. Each would have testified to the statements purportedly made by McDonald, on three separate occasions shortly after the crime, naming himself as the murderer. The State Supreme Court approved the exclusion of this evidence on the ground that it was hearsay.

The hearsay rule, which has long been recognized and respected by virtually every State, is based on experience and grounded in the notion that untrustworthy evidence should not be presented to the triers of fact. Out-of-court statements are traditionally excluded because they lack the conventional indicia of reliability: they are usually not made under oath or other circumstances that impress the speaker with the solemnity of his statements; the declarant's word is not subject to cross-examination; and he is not available in order that his demeanor and credibility may be assessed by the jury. *California* v. *Green*, 399 U. S. 149, 158 (1970). A number of exceptions have developed over the years to allow admission of hearsay statements made under circumstances that tend to assure reliability and thereby compensate for the absence of the oath and opportunity for cross-

examination. Among the most prevalent of these exceptions is the one applicable to declarations against interest [14]—an exception founded on the assumption that a person is unlikely to fabricate a statement against his own interest at the time it is made. Mississippi recognizes this exception but applies it only to declarations against pecuniary interest.[15] It recognizes no such exception for declarations, like McDonald's in this case, that are against the penal interest of the declarant. *Brown* v. *State*, 99 Miss. 719, 55 So. 961 (1911).

. This materialistic limitation on the declaration-against-interest hearsay exception appears to be accepted by most States in their criminal trial processes,[16] although a number of States have discarded it.[17] Declarations against penal interest have also been excluded in federal courts under the authority of *Donnelly* v. *United States*, 228 U. S. 243, 272–273 (1913), although exclusion would not be required under the newly proposed Federal Rules of Evidence.[18] Exclusion, where the limitation prevails, is usually premised on the view that admission would lead to the frequent presentation of perjured testimony to the jury. It is believed that confessions of criminal activity are often motivated by extraneous considerations and, therefore, are not as inherently reliable as statements against pecuniary or proprietary interest. While that rationale has been the subject of considerable

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[14] Jefferson, Declarations Against Interest: An Exception to the Hearsay Rule, 58 Harv. L. Rev. 1 (1944).

[15] H. McElroy, Mississippi Evidence § 46 (1955); *Forrest County Coop. Assn.* v. *McCaffrey*, 176 So. 2d 287, 289–290 (Miss. 1965).

[16] C. McCormick, *supra* n. 7, § 278, at 673; 5 J. Wigmore, Evidence § 1476, at 283–287 n. 9 (1940).

[17] See, *e. g.*, *People* v. *Spriggs*, 36 Cal. Rptr. 841, 389 P. 2d 377, 60 Cal. 2d 868 (1964); *People* v. *Lettrich*, 413 Ill. 172, 108 N. E. 2d 488 (1952); *People* v. *Brown*, 26 N. Y. 2d 88, 308 N. Y. S. 2d 825, 257 N. E. 2d 16 (1970); *Hines* v. *Commonwealth*, 136 Va. 728, 117 S. E. 843 (1923).

[18] Rule 804, *supra* n. 9.

scholarly criticism,[19] we need not decide in this case whether, under other circumstances, it might serve some valid state purpose by excluding untrustworthy testimony.

The hearsay statements involved in this case were originally made and subsequently offered at trial under circumstances that provided considerable assurance of their reliability. First, each of McDonald's confessions was made spontaneously to a close acquaintance shortly after the murder had occurred. Second, each one was corroborated by some other evidence in the case—McDonald's sworn confession, the testimony of an eyewitness to the shooting, the testimony that McDonald was seen with a gun immediately after the shooting, and proof of his prior ownership of a .22-caliber revolver and subsequent purchase of a new weapon. The sheer number of independent confessions provided additional corroboration for each. Third, whatever may be the parameters of the penal-interest rationale,[20] each confession here was in a very real sense self-incriminatory and unquestionably against interest. See

[19] See, *e. g.*, Committee on Rules of Practice & Procedure, Rules of Evidence for the United States Courts and Magistrates, 129–131 (Rev. draft, March 1971); 5 J. Wigmore, *supra* n. 16, § 1476, at 284; Wright, Uniform Rules and Hearsay, 26 U. Cinn. L. Rev. 575 (1957); *United States* v. *Annunziato*, 293 F. 2d 373, 378 (CA2), cert. denied, 368 U. S. 919 (1961) (Friendly, J.); *Scolare* v. *United States*, 406 F. 2d 563, 564 (CA9), cert. denied, 395 U. S. 981 (1969).

[20] The Mississippi case which refused to adopt a hearsay exception for declarations against penal interest concerned an out-of-court declarant who purportedly stated that he had committed the murder with which his brother had been charged. The Mississippi Supreme Court believed that the declarant may have been motivated by a desire to free his brother rather than by any compulsion of guilt. The Court also noted that the declarant had fled, was unavailable for cross-examination, and may well have known at the time he made the statement that he would not suffer for it. *Brown* v. *State*, 99 Miss. 719, 55 So. 961 (1911). There is, in the present case, no such basis for doubting McDonald's statements. See Note, 43 Miss. L. J. 122, 127–129 (1972).

United States v. *Harris*, 403 U. S. 573, 584 (1971); *Dutton* v. *Evans*, 400 U. S. 74, 89 (1970). McDonald stood to benefit nothing by disclosing his role in the shooting to any of his three friends and he must have been aware of the possibility that disclosure would lead to criminal prosecution. Indeed, after telling Turner of his involvement, he subsequently urged Turner not to "mess him up." Finally, if there was any question about the truthfulness of the extrajudicial statements, McDonald was present in the courtroom and had been under oath. He could have been cross-examined by the State, and his demeanor and responses weighed by the jury. See *California* v. *Green*, 399 U. S. 149 (1970). The availability of McDonald significantly distinguishes this case from the prior Mississippi precedent, *Brown* v. *State*, *supra*, and from the *Donnelly*-type situation, since in both cases the declarant was unavailable at the time of trial.[21]

Few rights are more fundamental than that of an accused to present witnesses in his own defense. *E. g.*,

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[21] McDonald's presence also deprives the State's argument for retention of the penal-interest rule of much of its force. In claiming that "[t]o change the rule would work a travesty of justice," the State posited the following hypothetical:

"If the rule were changed, A could be charged with the crime; B could tell C and D that he committed the crime; *B could go into hiding* and at A's trial C and D would testify as to B's admission of guilt; A could be acquitted and B would return to stand trial; B could then provide several witnesses to testify as to his whereabouts at the time of the crime. The testimony of those witnesses along with A's statement that he really committed the crime would result in B's acquittal. A would be barred from further prosecution because of the protection against double jeopardy. No one could be convicted of perjury as A did not testify at his first trial, B did not lie under oath, and C and D were truthful in their testimony." Respondent's Brief, at 7 n. 3 (emphasis supplied).

Obviously, "B's" absence at trial is critical to the success of the justice-subverting ploy.

Webb v. *Texas*, 409 U. S. — (1972); *Washington* v. *Texas*, 388 U. S. 14, 19 (1967); *In re Oliver*, *supra*. In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence. Although perhaps no rule of evidence has been more respected or more frequently applied in jury trials than that applicable to the exclusion of hearsay, exceptions tailored to allow the introduction of evidence which in fact is likely to be trustworthy have long existed. The testimony rejected by the trial court here bore persuasive assurances of trustworthiness and thus was well within the basic rationale of the exception for declarations against interest. That testimony also was critical to Chambers' defense. In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

We conclude that the exclusion of this critical evidence, coupled with the State's refusal to permit Chambers to cross-examine McDonald, denied him a trial in accord with traditional and fundamental standards of due process. In reaching this judgment we establish no new principles of constitutional law. Nor does our holding signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures. Rather, we hold quite simply that under the facts and circumstances of this case the rulings of the trial court deprived Chambers of a fair trial.

The judgment is reversed and the case is remanded to the Supreme Court of Mississippi for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 71-5908

Leon Chambers, Petitioner, v. State of Mississippi.	On Writ of Certiorari to the Supreme Court of Mississippi.

[February 21, 1973]

MR. JUSTICE WHITE, concurring.

We would not ordinarily expect an appellate court in the state or federal system to remain silent on a constitutional issue requiring decision in the case before it. Normally, a court's silence on an important question would simply indicate that it was unnecessary to decide the issue because it was not properly before the court or for some other reason. As my Brother REHNQUIST points out, the Court stated in *Street* v. *New York*, 394 U. S. 576, 582 (1969), that "when . . . the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show to the contrary."

Under this rule it becomes the petitioner's burden to demonstrate that under the applicable state law his claim was properly before the state court and was therefore necessarily rejected, although silently, by affirmance of the judgment. If he fails to do so, we need not entertain and decide the federal question that he presses.

It is not our invariable practice, however, that we will not ourselves canvass state law to determine whether the federal question, presented to but not discussed by the state supreme court, was properly raised in accordance with state procedures. The Court surveyed

state law in *Street*, itself, with little if any help from the appellant; and I think it is appropriate here where the State does not contest our jurisdiction and seemingly concedes that the question was properly raised below and necessarily decided by the Mississippi Supreme Court.

There is little doubt that Mississippi ordinarily enforces a rule of contemporaneous objection with respect to evidence; the three opinions in *Henry* v. *Mississippi*, 253 Miss. 263, 154 So. 2d 289 (1963); 253 Miss. 263, 174 So. 2d 348 (1965); 198 So. 2d 213 (1967), make this sufficiently clear. Also, that case came here, and we not only noted the existence of the rule but recognized that it served a legitimate state interest. The same rule obtains where the proponent of evidence claims error in its exclusion:

> "The rejection of evidence not apparently admissible is not error, in the absence of an offer or sufficient statement of the purpose of its introduction, by which the court may determine its relevancy or admissibility . . . . This Court has consistently followed this rule requiring definiteness and sufficiency of an offer of proof . . . ." *Freeman* v. *Mississippi*, 204 So. 2d 842, 847–848 (1967) (dissenting opinion).

There are Mississippi cases stating that in proper circumstances the contemporaneous objection rule will not be enforced and that the state supreme court in some circumstances will consider an issue raised there for the first time. In *Carter* v. *Mississippi*, 198 Miss. 523, 21 So. 2d 404 (1945), the only issue in the appellate court concerned appellant's mental condition at the time of the crime, an issue not raised at trial. The court said "the rule that questions not raised in the trial court cannot be raised for the first time on appeal, is not without exceptions, among which are errors 'affecting fundamental rights of the parties . . . or affecting

public policy' . . . if to act on which will work no injustice to any party to the appeal." *Id.*, at 528, 21 So. 2d, at 404. The court proceeded to consider the issue. In *Brooks* v. *Mississippi*, 209 Miss. 150, 155, 46 So. 2d 94, 97 (1950), a convicted defendant asserted in the state supreme court for the first time the inadmissibility of certain evidence on the grounds of an illegal search and seizure, violation of the rule against self-incrimination and improper cross-examination. The court considered these questions and reversed the conviction saying "errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal. . . . [W]here fundamental and constitutional rights are ignored, due process does not exist and a fair trial in contemplation of law cannot be had."

The reach of these cases was left in doubt when in affirming the judgment in *Henry* v. *Mississippi*, 253 Miss. 263, 154 So. 2d 289 (1963), the Mississippi Supreme Court refused to consider a claim of illegally obtained evidence because the matter had not been presented to the trial court. The case did not come within *Brooks* v. *Mississippi*, *supra*, the court ruled, because Henry's counsel were experienced and adequate, and Henry was bound by their mistakes. This Court vacated that judgment and remanded for determination whether there had been a deliberate bypass, reading Mississippi law as extending no discretion to give relief from the contemporaneous objection rule where "petitioner was represented by competent counsel familiar with local procedure." *Henry* v. *Mississippi*, 379 U. S. 443, 449 n. 5 (1965). In its initial opinion on remand, the Supreme Court of Mississippi reasserted the necessity to object at the time testimony is offered in the trial court, but it said "nevertheless if it appears to the trial judge that the foregoing rule of procedure would defeat justice and

bring about results not justified or intended by substantive law, the rule may be relaxed and subordinated to the primary purpose of the law to enforce constitutional rights in the interest of justice." *Henry* v. *Mississippi*, 253 Miss. 263, 287, 174 So. 2d 348, 351 (1965).*

In *King* v. *State*, 237 So. 2d 209, 211 (1970), this statement from the 1965 *Henry* opinion was interpreted as giving the supreme court of the State, as well as the trial court, sufficient latitude to treat the request for a peremptory instruction to the jury after failure to object to the introduction of allegedly illegally obtained evidence as if the appellant had made timely objection.

Moreover, in *Wood* v. *Mississippi*, 257 So. 2d 193, 200 (1972), where a convicted defendant complained of a wide-ranging and allegedly unfair cross-examination of defense witnesses, and where there had been a failure to object to part of the prejudicial inquiry, the state supreme court nevertheless considered the question, stating "we note also that no objection was made to the testimony of Donald Ray Boyd when he was asked whether he had ever been in jail. However, it was stated in *Brooks, supra*, that in extreme cases a failure to object to questions which were violative of a constitutional right did not in all events have to be objected to before they would receive consideration by this Court. The appellant in this case was being tried for murder. The evidence of defendant's guilt was extremely close. A shred of evidence one way or the other could have been persuasive to the jury. In our opinion this warrants our consideration of the questions and responses to which repeated objections were made and sustained by the

*The trial court on remand from the 1965 *Henry* decision, 253 Miss. 263, 174 So. 2d 348, found there had been deliberate bypass, and affirming on appeal, 198 So. 2d 213 (1967), the Mississippi Supreme Court did not mention *Brooks* v. *Mississippi*, 209 Miss. 150, 46 So. 2d 94 (1950), or the rule for like cases.

court, as well as the consideration of the testimony of Donald Ray Boyd wherein he was asked whether he had been in jail or not though no formal objection was made thereto."

These cases seemingly preserve some aspects of the *Brooks* rule and hence to anticipate some situations where the contemporaneous objection requirement will not be enforced, despite *Henry*. There will be occasions where the Supreme Court of Mississippi will consider constitutional claims made in that court for the first time.

Where this leaves the matter of our jurisdiction in the light of decisions such as *Williams* v. *Georgia*, 349 U. S. 375 (1955), is not clear. There, while acknowledging that motions for a new trial after final judgment were not favored in Georgia, the Court recognized that such motions had been granted in "exceptional" or "extraordinary" cases, their availability being within the well informed discretion of the courts. It was claimed that denying Williams' motion was an adequate state ground precluding review here, but "since his objection was based upon a constitutional objection, and one the validity of which has in principle been sustained here, the discretionary decision to deny the motion does not deprive this Court of jurisdiction to find that the substantive issue is properly before us." *Id.*, at 389.

In the circumstances before us, where there were repeated offers of evidence and objections to its exclusion, although not on constitutional grounds, where the matter was presented in federal due process terms to the state supreme court and where the State does not now deny that the issue was properly before the state court and could have been considered by it, I am inclined, although *dubitante*, to conclude with the Court that we have jurisdiction.

As to the merits, I would join in the Court's opinion and judgment.

SUPREME COURT OF THE UNITED STATES

No. 71–5908

Leon Chambers, Petitioner, *v.* State of Mississippi.	On Writ of Certiorari to the Supreme Court of Mississippi.

[February 21, 1973]

MR. JUSTICE REHNQUIST, dissenting.

Were I to reach the merits in this case, I would have considerable difficulty in subscribing to the Court's further constitutionalization of the intricacies of the common law of evidence. I do not reach the merits, since I conclude that petitioner failed to properly raise in the Mississippi courts the constitutional issue that he seeks to have this Court decide.

28 U. S. C. § 1257 provides in pertinent part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . . . .
>
> "(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

We deal here with a limitation imposed by Congress upon this Court's authority to review judgments of state courts. It is a jurisdictional limitation, *Cardinale* v. *Louisiana*, 394 U. S. 437, 438 (1969), that has always been interpreted with careful regard for the delicate

nature of the authority conferred upon this Court to review the judgments of state courts of last resort:

> "Upon like grounds the jurisdiction of this court to reexamine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right." *Oxley Stave Co.* v. *Butler County*, 166 U. S. 648, 655 (1897).

In *Street* v. *New York*, 394 U. S. 576 (1969), cited by the Court in its n. 3, the following language from the earlier case of *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 67 (1928), was quoted:

> ". . . No particular form of words or phrase is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision *and in due time*." 394 U. S., at 584 (emphasis added).

The question of whether a constitutional issue has been raised in "due time" in the state courts is one generally left to state procedure, subject to the important condition that the state procedure give no indication "that there was an attempt on the part of the state court to evade the decision of Federal questions, duly set up, by unwarranted resort to alleged rules under local practice." *Louisville & Nashville R. Co.* v. *Woodford*, 234 U. S. 46, 51 (1914). More recently the Court has stated in *Henry* v. *Mississippi*, 379 U. S. 443, 447 (1965) that:

> "These cases settle the proposition that a litigant's procedural defaults in state proceedings do not prevent vindication of his federal rights unless the State's insistence on compliance with its procedural rule serves a legitimate state interest."

Since the Court in *Henry* was dealing with a rule of trial procedure from the State of Mississippi, its analysis in that case is particularly helpful in deciding this one. It was conceded by all parties there that the Mississippi rules required contemporaneous objection to evidentiary rulings, and this Court commented:

> "The Mississippi rule . . . clearly does serve a legitimate state interest. By immediately apprising the trial judge of the objection, counsel gives the court the opportunity to conduct the trial without using the tainted evidence. If the objection is well taken the fruits of the illegal search may be excluded from jury consideration, and a reversal and new trial avoided." 379 U. S., at 448.

In that case, the petitioner had made his motion to exclude the evidence at the close of the State's case, and this Court observed that a ruling on the motion at that point would very likely have prevented the possibility of reversal and new trial just as surely as a ruling on a motion made contemporaneously with the offer of the evidence.

Here, however, the record of the state proceedings shows that the first occasion on which petitioner's counsel even hinted that his previous evidentiary objection had a constitutional basis was at the time he filed a motion for new trial. By delaying his constitutional contention until after the evidence was in and the jury had retired and returned a verdict of guilty against him, petitioner denied the trial court an opportunity to reconsider his evidentiary ruling in the light of the constitutional objection. While this Court in *Henry* expressed doubt as to the adequacy for federal purposes of Mississippi's differing treatment of a motion to exclude at the close of the State's case and an objection made contemporaneously with the offer of the evidence, there

can be no doubt that the policy supporting Mississippi's requirement of contemporaneous objection cannot be served equally well by a motion for new trial following the rendition of the jury's verdict.

It is perfectly true, as the Court states in n. 3 of its opinion, that petitioner "objected during trial to each of the court's rulings." But this is only half the test; the litigant seeking to have a decision here on a constitutional claim must not only object or otherwise advise the lower court of his claim that a ruling is error, but he must make it clear that his claim of error is *constitutionally* grounded. In *Bailey* v. *Anderson*, 326 U. S. 203 (1945), the petitioner argued in this Court that a state court condemnation award that failed to include interest from the date of possession denied him just compensation in violation of the Due Process Clause of the Fourteenth Amendment. This Court noted that in the state circuit court petitioner had requested that the award include interest from the date of taking, and that the circuit court without explanation had rejected this claim. But this Court went on to say:

> "But throughout the proceedings in the circuit court appellant made no claim to interest on constitutional grounds, and made no attack on the constitutionality of the award or the court's decree because of the asserted denial of interest." 326 U. S., at 206.

Concluding from an examination of the opinion of the Supreme Court of Appeals of Virginia that although appellant had raised his constitutional claim there, it had not been passed upon by that court, this Court held that the "appeal must be dismissed for want of any properly presented substantial federal question." 326 U. S., at 207.

Neither the majority nor the dissenting opinions of the Supreme Court of Mississippi contain one syllable that

refers expressly or by implication to any claim based on the Constitution of the United States. Those opinions did of course treat the evidentiary objections and proffers which this Court now holds to be of constitutional dimension, but it passed on them in terms of nonconstitutional evidentiary questions that are one of the staples of the business of appellate courts that regularly review claims of error in the conduct of trial. Since Mississippi requires contemporaneous objection to evidentiary rulings during the trial, it would have been entirely proper for the Supreme Court of Mississippi to conclude that even though petitioner might have asserted constitutional claims in his brief there, they had been raised too late to require consideration by it.

This Court said in *Street* v. *New York:*

> "Moreover, this Court has stated that when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." 394 U. S., at 582.

If, by some extraordinarily lenient construction of the decisional requirement that the constitutional claim be made "in due time" in the state proceedings, the making of such a claim for the first time in a motion for a new trial were deemed timely, it is still extraordinarily doubtful that this petitioner adequately raised any constitutional claims in his motion for new trial. That motion consisted of the following pertinent points:

> "3rd, the Court erred in refusing to declare Gable McDonald a hostile and adverse witness and permitting the Defendant to propound leading questions as on cross-examination.
>
> "4th, the Court erred in refusing to permit the Defendant to introduce evidence corroborating the

admission of Gable McDonald admitting the killing of Aaron Liberty.

. . . . . .

"6th, the trial of the Defendant was not in accord with fundamental fairness guaranteed by the Fourteenth Amendment of the Constitution of the United States and Article Three, Sections Fourteen and Twenty-Six of the Constitution of the State of Mississippi."

It would have to be an extraordinarily perceptive trial judge who could glean from this motion that the separately stated third and fourth points, dealing as they do in customary terms of claims of trial error in the exclusion or admission of evidence, were intended to be bolstered by the generalized assertion of the violation of due process contained in a separately stated point. The contention of the sixth point, standing by itself, that "the trial of the Defendant was not in accord with fundamental fairness guaranteed by the Fourteenth Amendment of the Constitution of the United States" directs the trial court to no particular ruling or decision that he may have made during the trial; it is a bald assertion that the trial from beginning to end was somehow fundamentally unfair. Even the most lenient construction of that part of 28 U. S. C. § 1257 that requires that the "title, right, privilege or immunity" be "specially set up or claimed" could not aid petitioner in his claim that this point properly raised a federal constitutional issue.

This Court under the Constitution has the extraordinarily delicate but equally necessary authority to review judgments of state courts of last resort on issues that turn on construction of the United States Constitution or federal law. But before we undertake to tell a state court of last resort that its judgment is inconsistent

with the mandate of the Constitution, it behooves us to make certain that in doing so we adhere to the congressional mandate that limits our jurisdiction. Believing as I do that petitioner has not complied with 28 U. S. C. § 1257 (3), I would dismiss the writ of certiorari.